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13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

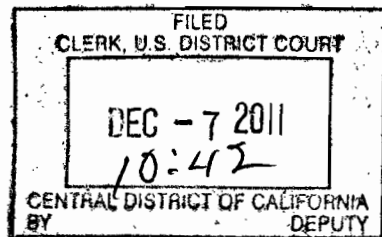
15 ACLU OF SOUTHERN
16 CALIFORNIA,

17 Plaintiff,

18 v.

19 UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT, a
20 component of the Department of
Homeland Security,

21 Defendant
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CASE NO.

CV11 10148

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Freedom of Information Act,
5 U.S.C. § 552

COPY

INTRODUCTION

1
2 1. Plaintiff, the ACLU of Southern California (“ACLU-SC” or “Plaintiff”),
3 brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552,
4 against Immigration and Customs Enforcement (“ICE”) to enforce its right to a
5 waiver of fees for organizations that seek the production of public records sought in
6 the public interest.

7 2. Plaintiff is a non-profit public interest organization whose mission is to
8 defend and secure the individual liberties and rights set out by the Constitution and
9 Bill of Rights, including the rights of immigrants. Since at least the late-1970s,
10 Plaintiff has monitored and responded to the federal government’s immigration
11 worksite enforcement actions, including raids conducted in violation of the
12 Constitution.

13 3. On June 29, 2010, ICE agents conducted a worksite raid at Terra
14 Universal, Inc., a factory in Southern California (“Terra Worksite Raid”), and
15 arrested approximately forty-three workers on suspicion of immigration violations.
16 The Terra Worksite Raid was one of the first worksite raids conducted under ICE’s
17 new policies and procedures for worksite enforcement actions, which were first
18 adopted in April 2009. In announcing the new policies, ICE stated it would
19 prioritize the prosecution of abusive employers, rather than individual workers.

20 4. On January 11, 2011, Plaintiff filed a FOIA request (“Request”) with
21 ICE seeking its new policies for worksite enforcement and documents pertaining to
22 the Terra Worksite Raid. As Plaintiff explained in its Request, the disclosure of the
23 requested documents will allow the public to better understand ICE’s new worksite
24 enforcement policies both in theory and in practice, and to determine and report on
25 whether the Terra Worksite Raid complied with those new policies, as well as
26 federal and state law.

1 5. Pursuant to FOIA, members of the public are empowered to request and
2 obtain records held by a federal agency. As recognized by the United States
3 Supreme Court:

4 The basic purpose of FOIA is to ensure *an informed*
5 *citizenry, vital to the functioning of a democratic society,*
6 *needed to check against corruption and to hold the*
7 *governors accountable to the governed.*

8 *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (emphases added).

9 6. To better ensure it would accomplish this purpose, FOIA contains
10 provisions requiring that fees associated with record requests be waived or reduced
11 under certain circumstances, including where the “disclosure of the information is in
12 the public interest.” 5 U.S.C. § 552(a)(4)(A)(iii). “The legislative history ...
13 demonstrates that Congress intended independent researchers, journalists, and *public*
14 *interest watchdog groups* to have *inexpensive access* to government records *in*
15 *order to provide the type of public disclosure believed essential to our society.*” *Inst.*
16 *for Wildlife Prot. v. U.S. Fish & Wildlife Serv.*, 290 F. Supp. 2d 1226, 1232 (D. Or.
17 2003) (emphases added).

18 7. Despite the fact that disclosure of the information sought in the Request
19 is plainly in the public interest, and despite the fact that ICE and other federal
20 agencies have routinely granted Plaintiff FOIA fee waivers in the past, ICE denied
21 Plaintiff’s request for a public interest fee waiver in this case. ICE further assessed
22 \$10,024 in search fees, of which it demanded Plaintiff pay half up-front before it
23 would begin processing the Request. As a result, nearly a year after Plaintiff first
24 submitted its request, ICE has still not released a single document, much less begun
25 the process of producing responsive documents.

26 8. Through this action, Plaintiff seeks to enforce its right to a public
27 interest fee waiver for its Request for documents pertaining to the Terra Worksite
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1 Raid and ICE's worksite enforcement policies – issues that have generated
2 significant public scrutiny and interest in recent years.

3 9. While this action only concerns ICE's denial of a single request, the
4 denial appears to be part of what has become a disturbing trend over the past several
5 years in which numerous government agencies have begun denying fee waiver
6 requests by public interest groups – such as Plaintiff – which were regularly granted
7 fee waivers in the past. These denials can prevent nonprofits from using FOIA,
8 defeating the purpose of the fee waiver provision and the critical role that nonprofits
9 play publicizing information regarding government programs and activities, and in
10 exposing government wrongdoing, through FOIA. Even where a nonprofit is
11 ultimately able to obtain a fee waiver through administrative or judicial review, the
12 delay thwarts FOIA's promise of timely access to information about the
13 government's current operations and activities.

14 10. This pattern is all the more troubling given the Obama Administration's
15 stated commitment to transparency in government. Indeed, on his first full day in
16 office, President Obama issued a Presidential Memorandum stating that, "[t]he
17 Freedom of Information Act should be administered with a clear presumption: In the
18 face of doubt, openness prevails In responding to requests under the FOIA,
19 executive branch agencies should act promptly and in a spirit of cooperation,
20 recognizing that such agencies are servants of the public The presumption of
21 disclosure should be applied to all decisions involving FOIA."

22 11. Through this lawsuit, Plaintiff seeks to hold the Administration to its
23 promise of openness through FOIA and to vindicate the public's right "to know what
24 their Government is up to." *NARA v. Favish*, 541 U.S. 157, 171 (2004) (internal
25 quotations and citations omitted).
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1 16. Defendant ICE is a component of the Department of Homeland Security
2 and responsible for enforcing federal laws governing border control, customs, trade
3 and immigration. ICE is an “agency” within the meaning of 5 U.S.C. § 552(f)(1).

4 **STATUTORY FRAMEWORK**

5 17. The Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, mandates
6 disclosure of records held by a federal agency in response to a request for such
7 records by a member of the public, unless records fall within certain narrow statutory
8 exemptions.

9 18. “The basic purpose of FOIA is to ensure an informed citizenry, vital to
10 the functioning of a democratic society, needed to check against corruption and to
11 hold the governors accountable to the governed.” *See NLRB v. Robbins Tire &*
12 *Rubber Co.*, 437 U.S. 214, 242 (1978). Through access to government information,
13 FOIA helps the public better understand the operations of the government, thereby
14 enabling a vibrant and functioning democracy.

15 19. Any member of the public may make a request for records to an agency
16 of the United States under the FOIA. A FOIA requestor may ask that the agency
17 waive or limit any fees associated with processing the FOIA request. 5 U.S.C.
18 § 552(a)(4).

19 20. FOIA provides that an agency shall furnish documents without charge
20 or at a reduced charge if disclosure of the information is in the public interest
21 because it “is likely to contribute significantly to public understanding of the
22 operations or activities of the government,” and is “not primarily in the commercial
23 interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k)
24 (DHS six-factor test for evaluating request for public interest fee waiver).

25 21. Requests for fee waivers are to be “liberally construed in favor of
26 waivers for noncommercial requesters.” *Fed. CURE v. Lappin*, 602 F. Supp. 2d 197,
27 201 (D.D.C. 2009) (citation and quotations omitted).

1 22. An agency that receives a FOIA request must respond in writing to the
2 requestor within twenty (20) business days after the receipt of such request. 5 U.S.C.
3 § 552(a)(6)(A)(i). In its response the agency must inform the requester whether or
4 not it intends to comply with the request (which might include a fee waiver or fee
5 reduction request), provide reasons for its determination, and inform the requestor of
6 her right to appeal the determination. *Id.*

7 23. A FOIA requester who has been denied a fee waiver may appeal the
8 denial to the agency. The agency must make a determination on the appeal within
9 twenty (20) business days of receipt of the appeal. 5 U.S.C. § 552(a)(6)(A)(ii).

10 24. A FOIA requester may bring an action in district court to challenge the
11 denial of a fee waiver. *See* 5 U.S.C. §§ 552(a)(4)(A)(vii) and 552(a)(4)(B).

12 STATEMENT OF FACTS

13 25. All statements made herein are made upon information and belief
14 except where the basis of knowledge is specifically stated.

15 I. ICE's Worksite Enforcement Policies

16 26. On April 30, 2009, ICE announced that it was adopting new policies
17 and guidance for worksite immigration enforcement actions. The announcement
18 marked a departure from ICE's policies and practices during the last several years of
19 the Bush Administration, which was widely condemned for its aggressive and often
20 unconstitutional worksite enforcement tactics that resulted in the arrest, deportation
21 and, in many cases, criminal prosecution of large numbers of undocumented workers,
22 but only minor sanctions, if any, for the employers who hired them.

23 27. In an April 30, 2009 press release, ICE explained that the new policies
24 sought to focus enforcement on employers, rather than workers, and prioritized the
25 prosecution of employers who engage in abusive employment practices "in order to
26 target the root cause of illegal immigration." A copy of that press release is attached
27 to this complaint as Exhibit 15. The shift in policy reflected prior statements by
28

1 DHS Secretary Napolitano that worksite enforcement “needs to be focused on
2 employers who intentionally and knowingly exploit the illegal labor market.”

3 28. The ICE press release also announced that it would extend humanitarian
4 protections to workers at companies of twenty-five or more employees that are
5 subject to an enforcement action. Under the humanitarian guidelines, ICE is
6 required to develop a comprehensive plan to identify any individuals arrested on
7 administrative immigration charges who are the sole caregivers of minor children or
8 of disabled or seriously ill relatives or who have other humanitarian concerns, and to
9 coordinate with federal, state and local agencies to conduct humanitarian screening.

10 **II. Terra Universal Worksite Enforcement Action**

11 29. On June 29, 2010, approximately forty ICE agents raided the
12 manufacturing facility of Terra Universal, Inc., located in Fullerton, CA.

13 30. Upon entering the premises of the factory, ICE agents blocked all exits,
14 stopped all production and ordered all workers to gather in the center of the plant.
15 ICE agents asked the workers to form three groups according to their citizenship or
16 immigration status: citizens, lawful permanent residents, and undocumented workers.

17 31. Workers were questioned on-site about their immigration status and
18 those who admitted to being undocumented were handcuffed. In total,
19 approximately forty-three workers were arrested and transported to an ICE
20 processing center in Santa Ana for further questioning.

21 32. Later that afternoon, attorneys from the ACLU-SC arrived at the Santa
22 Ana federal building but were denied access to the detained workers by ICE staff.

23 33. After being questioned and issued Notices to Appear, most of the
24 workers were released.

25 34. Terra Universal is or was under investigation by ICE and the U.S.
26 Attorney’s Office for criminal and civil immigration violations.
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1 35. The Department of Labor also investigated and filed civil charges
2 against Terra Universal for federal wage and hour violations. *Solis v. Terra*
3 *Universal, et al.*, 11-cv-00633 CJC (AJWx) (C.D. Cal. Apr. 22, 2011). The agency
4 reached a settlement agreement with the company in May 2011.

5 36. In August 2010, ACLU-SC filed a federal class-action lawsuit on behalf
6 of current and former Terra Universal workers, alleging federal and state wage and
7 hour violations at Terra Universal. *See Morales, et al. v. Terra Universal, Inc., et al.*,
8 CV10-6490 (PA) (C.D. Cal. 2010). Osfel Andrade Castillon, a former Terra
9 Universal employee who was not arrested in the Terra Worksite Raid, was one of
10 four named plaintiffs in the lawsuit.

11 37. On November 10, 2010, ICE agents arrested Mr. Andrade at his home
12 in Anaheim, California, and placed him in removal proceedings. Immediately
13 following his arrest, ICE agents told Mr. Andrade that they received information
14 from a senior manager at Terra Universal indicating that he had not been arrested
15 during the raid. There is reason to believe that Terra Universal may have reported
16 Mr. Andrade to ICE in retaliation for his filing a lawsuit against the company.

17 38. ICE's Operating Instruction 287.3a (now designated as ICE Special
18 Agents Field Manual § 33.14(h)) directs ICE agents not to engage in an enforcement
19 action when there is "reason to suspect that a source might be providing information
20 about potential undocumented aliens in order to interfere with the rights of the
21 employees in the middle of a labor dispute or for retaliatory purposes." ICE's arrest
22 of Mr. Andrade may have violated Operating Instruction 287.3a.

23 39. Since the day of the Terra Worksite Raid, the ACLU-SC has
24 documented constitutional and statutory violations by ICE officials during and after
25 the raid. ACLU-SC has publicized this information through a variety of means,
26 including, *inter alia*, through press releases, interviews with the press, blog posts, its
27 website, and a short film it produced about the raid. The ACLU-SC also provided
28

1 written Congressional testimony regarding the Terra Worksite Raid for a hearing
 2 before the House Judiciary Subcommittee on Immigration Policy and Enforcement
 3 in January 2011. ACLU, Written Statement for a Hearing on “ICE Worksite
 4 Enforcement: Up to the Job?” Submitted to the House Judiciary Subcommittee on
 5 Immigration Policy and Enforcement (Jan. 26, 2011), *available at*
 6 http://www.aclu.org/files/assets/ACLU_Statement_re_Worksite_Enforcement.pdf.
 7 A copy of that statement is attached to this complaint as Exhibit 1.

8 **III. The ACLU’s Long-Standing Commitment to Public Education and**
 9 **Advocacy on Worksite Immigration Enforcement**

10 40. ACLU-SC’s work related to the Terra Worksite Raid is part of its long-
 11 standing commitment to public education and advocacy on worksite immigration
 12 enforcement. Since at least the late 1970s, the ACLU-SC has litigated a number of
 13 precedent-setting cases that established the constitutional rights of people arrested
 14 during immigration worksite raids. *See Ramon-Sepulveda v. I.N.S.*, 743 F.2d 1307
 15 (9th Cir. 1984) (ACLU-SC case arising out of 1978 immigration raid on factory);
 16 *NLG v. Chertoff*, Case No. 2:08-cv-01000 (C.D. Cal. 2008) (case arising out of 2008
 17 immigration raid at a Van Nuys business).

18 41. More recently, the ACLU-SC has played an instrumental role in
 19 monitoring and responding to worksite raids, such as a 1995 raid on a garment
 20 factory in El Monte, California and a 2008 ICE raid on a factory in Van Nuys,
 21 California. *See, e.g.*, Press Release, ACLU-SC, Civil Rights Groups File Lawsuit
 22 Over Van Nuys Workplace Raid After ICE Bars Attorneys from Immigration
 23 Interviews (Feb. 14, 2008); Kenneth Noble, “Los Angeles Sweatshops are Thriving,
 24 Experts Say,” N.Y. TIMES, Aug. 5, 1995 (quoting the ACLU-SC). A copy of that
 25 press release is attached to this complaint as Exhibit 2. A copy of that article is
 26 attached to this complaint as Exhibit 3.

27 42. Following the Van Nuys raid, the ACLU-SC and the National
 28 Immigration Law Center (“NILC”) sought records related to the raid through a FOIA

request nearly identical to the one at issue in this action. After ICE refused to release certain documents, the ACLU-SC and NILC filed suit. *See NILC v. ICE*, Case No. CV 08-07092 (DDP) (C.D. Cal. 2008). The case ultimately settled after ICE agreed to disclose certain responsive documents and, notably, did not seek to assess the ACLU-SC any fees.

IV. Defendant's Improper Denial of Plaintiff's Fee Waiver Request

43. On January 19, 2011, Plaintiff submitted to ICE a request for agency records pursuant to the FOIA (the "ICE FOIA Request"). A copy of that letter is attached to this complaint as Exhibit 4.

44. The ICE FOIA Request sought two (2) categories of documents:

1) Records relating to ICE policies, procedures and practices with respect to worksite immigration enforcement in effect or issued from January 2010 until the present.

2) Records relating to Terra Universal and Osfel Andrade Castillon.

See Exhibit 4 at 3-4.

45. Plaintiff also requested a limitation or waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. § 5.11(d)(1). Exhibit 4 at 4-5.

46. In addition, Plaintiff requested a waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k). Exhibit 4 at 5-6.

47. By letters dated January 31, 2011, ICE informed Plaintiff that its fee waiver request would be held in abeyance pending the quantification of responsive records. ICE specifically noted that Plaintiff was a "non-commercial requestor." A copy of ICE's two January 31, 2011 letters are attached to this complaint as Exhibit 5.

1 48. By letter dated February 18, 2011, ICE denied Plaintiff's request for a
2 fee limitation or waiver based on "representative of the news media" status. A copy
3 of that letter is attached to this complaint as Exhibit 6.

4 49. By letter dated February 22, 2011 (which Plaintiff sent before receiving
5 ICE's February 18, 2011 letter), Plaintiff timely appealed ICE's January 31, 2011
6 decision to hold in abeyance Plaintiff's fee waiver request and/or ICE's decision to
7 deny Plaintiff's fee waiver request. A copy of that letter is attached to this complaint
8 as Exhibit 7.

9 50. In a separate letter dated February 22, 2011, ICE denied Plaintiff's
10 request for a fee waiver. A copy of that letter is attached to this complaint as Exhibit
11 8. Instead of providing any reasons for the denial, ICE merely listed the six factors
12 for determining whether the applicable legal standard for a fee waiver has been met,
13 as set forth in 6 C.F.R. § 5.11(k), and stated, without elaboration, that "[u]pon review
14 of your request and a careful consideration of the factors listed above, I have
15 determined to deny your request for a fee waiver." Exhibit 8 at 1.

16 51. By letter dated March 14, 2011, Plaintiff timely appealed ICE's decision
17 to deny Plaintiff's fee waiver request and decision to deny Plaintiff's request for
18 "representative of the news media" status. A copy of that letter is attached to this
19 complaint as Exhibit 9.

20 52. By letters dated April 4, 2011 and May 2, 2011, Plaintiff supplemented
21 the previously filed appeal, providing additional authority supporting its entitlement
22 to a public interest fee waiver, including several recent cases awarding fee waivers to
23 other ACLU affiliates and other nonprofits. A copy of each of these letters is
24 attached to this complaint as Exhibit 10 and Exhibit 11.

25 53. By letter dated July 6, 2011, ICE affirmed its prior denial of Plaintiff's
26 requests for a fee waiver, deciding that ACLU-SC was not eligible for a public
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1 interest fee waiver or “representative of the news media” status. A copy of that letter
2 is attached to this complaint as Exhibit 12.

3 54. In its response, ICE stated that disclosure of the requested documents
4 would be in the Plaintiff’s “commercial interest.” Specifically, and in direct
5 contravention of its prior determination that Plaintiff is a “non-commercial
6 requestor,” ICE stated that “[t]he request fails to specify the non-commercial intent
7 to disseminate the information to significantly contribute to the public’s
8 understanding” and that “[t]he commercial interest of [ACLU-SC] can be gleaned
9 from their website, and is directly advanced by the requested information in this
10 instance.” *See* Exhibit 12 at 1-2.

11 55. ICE instructed Plaintiff that it could seek judicial review of the final
12 denial. Exhibit 12 at 3.

13 56. By letter dated August 30, 2011, Plaintiff responded to ICE’s July 6,
14 2011 letter denying Plaintiff’s appeal in order to address its argument that the
15 requested documents would somehow further ACLU-SC’s “commercial interests,”
16 an unprecedented position which ICE raised for the first time in its appeal. A copy
17 of that letter is attached to this complaint as Exhibit 13.

18 57. By letter dated September 29, 2011, ICE asserted that Plaintiff’s August
19 30, 2011 letter was “substantively identical” to Plaintiff’s March 14, 2011 appeal
20 (incorrectly referred to by ICE as the “January 22, 2011” appeal), and, as such, ICE
21 was administratively closing the appeal. A copy of that letter is attached to this
22 complaint as Exhibit 14.

23 58. ICE instructed Plaintiff that it could seek judicial review of the final
24 decision. Exhibit 14 at 1.

25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26 59. Plaintiff realleges and incorporates, as though fully set forth herein,
27 each and every allegation contained in the above paragraphs.
28

60. Plaintiff exhausted its administrative remedies with ICE when the agency issued its final decision on or about September 29, 2011.

FIRST CLAIM FOR RELIEF

[Violation of FOIA for Failure to Grant Public Interest Fee Waiver Request]

61. Plaintiff realleges and incorporates, as though fully set forth herein, each and every allegation contained in the above paragraphs.

62. Defendant ICE denied Plaintiff's public interest fee waiver or fee reduction request in violation of 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k).

63. Disclosure of the requested records "is likely to contribute significantly to public understanding of the operations or activities of the government," namely, ICE's policies and procedures for worksite immigration enforcement actions and its implementation of those policies during the Terra Worksite Raid. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Further, Plaintiff has a demonstrated ability and interest in distributing information about immigration enforcement to the public.

64. The Request is "not primarily in the commercial interest of the requester" because Plaintiff is a non-profit organization that seeks to use the responsive records for public education and public policy advocacy. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

- a. Declare that Defendant ICE's failure to grant Plaintiff's fee waiver request is unlawful;
- b. Enjoin Defendant ICE from assessing fees or costs for processing of the ICE FOIA Request;
- c. Award Plaintiff its costs and reasonable attorney's fees incurred in this action as provided by 5 U.S.C. § 552(a)(4)(E); and

Exhibit 1

The American Civil Liberties Union

Written Statement
For a Hearing on

ICE Worksite Enforcement: Up to the Job?

**Submitted to the House Judiciary Subcommittee
on Immigration Policy and Enforcement**

January 26, 2011

ACLU Washington Legislative Office

Laura Murphy, Director
Joanne Lin, Legislative Counsel
jlin@dcacclu.org

ACLU Immigrants' Rights Project

Andre Segura, Staff Attorney

ACLU of Southern California

Jennie Pasquarella, Staff Attorney

I. Introduction

The ACLU is a nationwide, non-partisan organization of more than 500,000 members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants, including the rights of immigrant workers during immigration raids and in other contexts. The ACLU of Southern California (ACLU/SC), based in Los Angeles, is the oldest of the 53 ACLU affiliates nationwide. Among the ACLU/SC's core priorities is to protect and ensure the constitutional and civil rights of immigrants. In the past three years, the ACLU/SC has responded to two large worksite raids – those targeting Microenterprise Solutions in Van Nuys, California in February 2008; and Terra Universal in Fullerton, California in June 2010 – and provided representation to workers arrested in those raids.

The ACLU submits this statement to express its concerns about the harm to *all* workers – including U.S. citizens, documented workers, and undocumented workers – caused by immigration worksite enforcement actions that include workplace raids. Immigration violations are inextricably linked to labor violations, particularly in low-wage industries. Immigration raids resulting in the arrest and deportation of workers have a variety of negative effects:

- They drive down wages and labor conditions for all workers, regardless of immigration status, including the loss of jobs for U.S. workers.
- They interfere with workers' ability freely to exercise their workplace rights and frustrate criminal and civil prosecutions of abusive employers.
- They incentivize employers to employ undocumented workers in substandard conditions because the threat of immigration enforcement prevents workers from complaining.
- They undermine the efforts of state and federal agencies to enforce labor and employment laws.
- They have a chilling effect on workers' private enforcement of their labor rights through the courts.

In addition to the negative consequences immigration raids have on all workers, past raids have violated workers' constitutional rights. ICE has the power to enforce immigration laws, but not at the cost of running roughshod over the Constitution. Citizens and non-citizens are entitled to protections against unreasonable searches and seizures under the Fourth

Amendment, as well as to equal protection of the laws and due process under the Fifth and Fourteenth Amendments. The manner in which ICE has historically conducted raids raises serious concerns about their legality.

II. Immigration Raids Raise Serious Constitutional Concerns.

The ACLU has previously presented information to this Subcommittee about why ICE's conduct of worksite raids jeopardizes legal rights.¹ Citizens and non-citizens alike are protected by the Bill of Rights; any affront to the rights of non-citizens erodes the rights of all Americans. When due process and equal protection under the Fifth and Fourteenth Amendments, as well as the guarantee against unreasonable searches and seizures under the Fourth Amendment, are denied to one vulnerable group, our Constitution and its fundamental protections are tarnished.

ICE's worksite raids have been conducted in a particularly coercive manner. ICE has used tactics that create an atmosphere in which no reasonable person would feel at liberty to leave, making any due process right not to answer ICE's questioning illusory. For example, ICE has entered worksites like Microenterprise Solutions, a factory in Van Nuys, California, in dragnet fashion, using armed agents to secure the perimeter and exits. ICE has also forcefully ordered workers to stop working and detained them for questioning – including U.S. citizens – without any reasonable suspicion that they are in the country unlawfully.² ICE agents have denied food and water to workers prior to interrogating them for extended periods.³ A recent report concluded regarding the Swift & Company raid in Marshalltown, Iowa, that “ICE's consistent lack of articulable facts or individualized suspicion that anyone had conducted unlawful activity to justify detaining the workers, constituted a clear violation of those workers' Fourth Amendment rights.”⁴

¹ ACLU Statement for House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Hearing on “Immigration Raids: Postville and Beyond,” (July 24, 2008), *available at* http://www.aclu.org/files/images/asset_upload_file428_36231.pdf; *see also* Justin Cox and Michael J. Wishnie, “The Constitutional Law of Immigration Enforcement,” Appendix to UFCW (United Food and Commercial Workers International Union), “Raids on Workers: Destroying Our Rights,” 63 (2009).

² *See also* Raids on Workers, *supra*, at 46 (describing Massachusetts raid in which “500 ICE agents swarmed [the Michael Bianco, Inc. (MBI) factory], blocked exits and detained 500 workers without cause and without individual reasonable suspicion. All of the workers were prohibited from leaving the worksite and held until every worker was questioned about their immigration status.”).

³ *Id.* at 46-47.

⁴ *Id.* at 47.

Employees who are detained are frequently not advised of their right to an attorney, or informed that statements could be used against them. After the 2008 Microenterprise Solutions raid, for example, ICE did not allow workers access to attorneys until after the ACLU/SC, the National Immigration Law Center, and the National Lawyers Guild filed a lawsuit, which ICE settled out of court.

Such illegal actions by ICE have continued beyond the initial questioning stage. Immigrants arrested in raids are commonly transferred to remote, out-of-state detention facilities within hours of their arrest. Panicked family members and lawyers – if workers are fortunate enough to have lawyers, given that the vast majority of detainees lack legal representation⁵ – are at a loss to ascertain the workers' whereabouts in a raid's aftermath.⁶ ICE agents have then pressured detainees into signing stipulated removal orders which waive critical due process rights and the opportunity to seek relief, even in cases in which a worker has a valid claim to stay in the United States.⁷

ICE's mission must be carried out in a humane manner and in accordance with the Constitution. The cost of workplace raids extends beyond causing lasting economic damage and impeding the exercise of employee rights to the detriment of all workers. In violating constitutional rights, ICE's past raids have brought discredit to the agency and compound the raids' counter-productivity with unlawfulness.

III. Anatomy of a Raid: Terra Universal, Fullerton California (June 2010).

On June 29, 2010, ICE agents from the Santa Ana Field Office in California conducted an immigration raid on Terra Universal, Inc. in Fullerton, California and arrested 43 workers whom ICE believed were undocumented. ICE transported the workers to its processing facility in Santa Ana where the workers were questioned about working conditions and their immigration status. All but one of the workers were released, and most were issued Notices to Appear.

⁵ American Bar Association Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*. (2010), 5-8, available at <http://new.abanet.org/immigration/pages/default.aspx>

⁶ Raids on Workers, *supra*, at 52 ("After the MBI raid in New Bedford, Mass., more than 200 of the detained workers were transferred by airplane to a detention facility in Texas. They were not allowed to call attorneys and were interrogated for hours without lawyers.").

⁷ See *id.* at 54; see generally *United States v. Ramos*, 623 F.3d 672 (9th Cir. 2010).

At subsequent ICE interviews, workers reported that they were threatened with detention if they did not admit their alienage. As soon as ICE charged them with removability, the agency created a conflict of interest that could have been avoided. It became far more difficult, if not impossible, for the workers to cooperate with ICE's criminal investigation of Terra Universal, and serve as witnesses about the company's unlawful employment practices, without making statements against their interest. Given the conflict of interest, the workers feared that if they cooperated in ICE's investigation they would either be forced to incriminate themselves or be detained for refusing to do so.

8 CFR § 287.8(c)(2)(vii) prohibits ICE officials from using any threats or coercion "to induce a suspect to waive his or her rights or to make a statement." The Fifth Amendment requires that ICE cease its questioning about alienage once a person asserts his or her right to silence.⁸ ICE has no legal authority to detain persons for being "uncooperative witnesses," as the agency mistakenly perceived the Terra Universal workers to be. To arrest and detain without a warrant, ICE must determine that a subject is "likely to escape before a warrant can be obtained" or is a flight risk, categories inapplicable to these workers who had already qualified for release.⁹

The Terra Universal raid shows that the agency is not universally putting into practice either effective or lawful enforcement practices. ICE's own April 30, 2009 "Worksite Enforcement Strategy" states that "[a]n effective strategy must do all of the following: 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are tempted to hire illegal workers; 3) encourage all employers to take advantage of well-crafted compliance tools. To accomplish these goals, ICE must prioritize the criminal prosecution of the actual employers who knowingly hire illegal workers because such employers are not sufficiently punished or deterred by the arrest of their illegal workforce." ICE's actions with respect to Terra Universal's workers demonstrate that a raid-based approach works at cross-purposes with the goal of targeting unscrupulous employers: If workers are treated as removal targets, rather than integral witnesses to criminal and civil employment violations who may also be victims of abusive practices, ICE plays into the hands of abusive employers by stifling workers' ability to complain and assist enforcement efforts.

IV. Immigration and Labor Violations are Inextricably Linked in the Workplace.

⁸ See, e.g., *Pearl Meadows Mushroom Farm, Inc. v. Nelson*, 723 F. Supp. 432, 447-48 (N.D. Cal. 1989) ("Constitutional restraints on unbridled police detentions apply to detentions for questioning on illegal alienage.").

⁹ 8 U.S.C. § 1357 (ICE officials can make warrantless arrests of individuals for immigration violations only if there is probable cause and if the individual "is likely to escape before a warrant can be obtained for his arrest"); 8 C.F.R. § 287.8(c)(2)(ii) (requiring a warrant before any immigration arrest is made "except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained").

Federal employment and labor laws protect all workers regardless of immigration status.¹⁰ As long as immigration enforcement interferes with workers' ability to secure such protections, it will continue to drive down wages and labor conditions. As the Supreme Court has underscored, "acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens."¹¹

Employers who knowingly hire undocumented workers understand the significant financial incentive. Without lawful status, undocumented workers are easy targets for exploitation: They are more likely to accept lesser wages, longer hours, and substandard working conditions. Fearing immigration retaliation, they are less likely to complain, assert their workplace rights, or report unlawful employment practices to authorities. Immigration worksite enforcement actions that target undocumented workers for arrest and deportation only exacerbate these infirmities, increasing incentives to hire undocumented workers by bolstering the retaliatory stick of unscrupulous employers.

It is therefore not surprising that where ICE finds companies knowingly hiring large numbers of undocumented workers, the companies have often subjected those workers to significant wage, hour, and safety violations throughout the course of their employment. At the extreme are cases like that of Agriprocessors, a kosher meatpacking plant in Postville, Iowa, that ICE agents raided on May 12, 2008.¹² In the largest single-site immigration raid in U.S. history, ICE agents arrested 389 workers. Citing labor violations as evidence of possible immigration violations, ICE's search warrant application for the Agriprocessors raid "cited repeated serious health and safety and wage and hour violations as evidence that the company may be guilty of

¹⁰ See, e.g., *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 892 (1984) (undocumented employees are "employees" under the NLRA); *EEOC v. Hacienda Hotel*, 881 F.2d 1504 (9th Cir. 1989), *overruled on other grounds by Burrell v. Star Nursery, Inc.*, 170 F.3d 951 (9th Cir. 1999) (federal employment discrimination laws protect undocumented workers); *Patel v. Quality Inn So.*, 846 F.2d 700, 706 (11th Cir. 1988) (FLSA protects the rights of undocumented workers to unpaid wages earned); *Contreras v. Corinthian Vigor Ins. Brokerage, Inc.*, 25 F. Supp. 2d 1053, 1056 (N.D. Cal. 1998) ("There is no question that the protections provided by the FLSA apply to undocumented aliens") (citing *In re Reyes*, 814 F.2d 168, 170 (5th Cir. 1987)); see also *Chellen v. John Pickle Co. Inc.*, 446 F. Supp. 2d 1247, 1286 (N.D. Okla. 2006) ("[T]he legal status and citizenship of plaintiff employees . . . does not preclude the aggrieved individuals from recovering full and fair compensation for work actually performed, whether under FLSA, Title VII or § 1981."); *Singh v. Jutla & C.D. & R's Oil*, 214 F. Supp. 2d 1056, 1062 (N.D. Cal. 2002) ("Prohibiting plaintiff from bringing this claim under the FLSA would provide a perverse economic incentive to employers to seek out and knowingly hire illegal workers, as defendant did here, in direct contravention of immigration laws.").

¹¹ *De Canas v. Bica*, 424 U.S. 351, 356-57 (1976).

¹² See ACLU Statement of July 24, 2008; *supra*.

harboring unauthorized workers.”¹³ Company supervisors subjected these workers to sexual exploitation and abuse, routine physical assault, and, in one incident, duct-taped the eyes of a worker and hit him with a meat hook. Children as young as 13 worked in the factory.¹⁴ Workers reported unpaid wages, failure to pay overtime wages, and unlawful deductions.¹⁵ Ultimately, the company was fined nearly \$10 million in civil penalties for state wage and hour violations.¹⁶

The link between immigration and labor violations was also apparent at Terra Universal. In addition to hiring undocumented workers knowingly, the company subjected all of its workforce (including citizens, documented workers, and undocumented employees) to years of exploitation and abuse, most significantly requiring employees to work as many as 14 hours a day without overtime pay.¹⁷ The company systematically tracked which employees were undocumented by placing a red sticker on their personnel files, and paid those workers half the salaries of documented or U.S. citizen employees; deprived them of benefits, raises, and promotions; and engaged in hostile treatment.¹⁸

ICE Deputy Director Kumar Kibble commendably testified before the Subcommittee that “to successfully prosecute a [human] trafficking scheme it’s important to have a victim-centered approach because to the extent that we can enlist the aid of that victim as a witness, we’ll be able to more successfully prosecute the trafficker, and, therefore, prevent that from occurring again and again.”¹⁹ ICE and its cross-agency partners have the ability to replicate this model of enforcement in the workplace by committing to a worker-centered approach. To protect all workers, Americans and non-citizens, from exploitation and abuse, immigration worksite enforcement must be conducted hand-in-hand with labor enforcement and an overriding commitment to taking actions which promote, rather than suppress, employees’ ability to exercise their workplace rights and safely reach out for help when it’s needed.

¹³ AFL-CIO, American Rights at Work Education Fund & National Employment Law Project, “Iced Out: How Immigration Enforcement Has Interfered with Workers’ Rights.” 24 (2009).

¹⁴ Raids on Workers, *supra*, at 38-39.

¹⁵ *Id.* at 39.

¹⁶ Julia Preston, *Meatpacker is Fined Nearly \$10 Million*, New York Times (Oct. 29, 2008).

¹⁷ Complaint, *Morales, et al. v. Terra Universal, Inc.*, No. 10-cv-6490 (C.D. Cal. Aug. 31, 2010), 1-2.

¹⁸ *Id.* at 2, 12

¹⁹ Kumar C. Kibble, Testimony to the House Judiciary Subcommittee on Immigration Policy and Enforcement, Hearing on “ICE Worksite Enforcement - Up to the Job?” (Jan. 26, 2011).

V. Immigration Raids Drive Down Workplace Conditions for All Workers and Undermine Labor Enforcement.

Immigration raids that target undocumented workers for arrest and deportation harm U.S. workers. Rather than curbing the race to the bottom on wages and working conditions, immigration raids fuel that race for several reasons:

First, U.S. workers often lose their jobs in the wake of immigration raids. Immigration raids can cripple a workforce and require employers to pay significant costs and fees that may lead to a company closing its doors. Six months after the 2008 ICE raid on Agriprocessors in Postville, Iowa, the company shut down.²⁰ Agriprocessors once was the largest employer in Postville.²¹ At Terra Universal, the ICE raid significantly disrupted business, costing the company “thousands of dollars.”²²

As collateral damage, moreover, U.S. citizen and documented employees are affected by both the economic fallout and constitutional and civil rights violations that occur during immigration raids. For example, in the course of ICE’s February 2008 raid on Microenterprise Solutions, agents detained and interrogated all workers in the plant, including 114 U.S. citizen and lawful permanent resident employees. This group later sued ICE for damages resulting from their unlawful and unjustified detention.²³

Second, immigration worksite raids have a chilling effect on the ability of undocumented workers to report workplace violations and/or exercise their workplace rights. When ICE acts on information provided by employers seeking to intimidate a workforce, the federal government becomes complicit in the infringement of labor rights. ICE has wrongly conducted worksite enforcement actions at the behest of employers motivated by labor complaints or disputes, which triggered some of the most publicized raids in recent years.²⁴

When undocumented workers cannot assert their lawful rights in the workplace, they are powerless to ensure basic employer compliance with wage, hour, and safety laws. Workers in the shadows fear that any attempt to hold their employers accountable or assert their rights will

²⁰ See Raids on Workers, *supra*, at 39.

²¹ Press Release, Dep’t of Justice & ICE, “ICE and DOJ Joint Enforcement Action at Iowa Meatpacking Plant.” (May 12, 2008), available at <http://www.ice.gov/news/releases/0805/080512cedarrapid.htm>

²² Cindy Carcamo, *Feds announce new tactic in illegal hiring crackdown*, Orange County Register (Jan. 20, 2011).

²³ Emily Bazar, *Citizens sue after detentions, immigration raids*, USA Today (June 25, 2008).

²⁴ Iced Out, *supra*, at 10, 18-19, 26-27; Raids on Workers, *supra*, at 40.

result in the employer calling ICE. Unscrupulous employers use the threat of immigration enforcement to quell worker grievances. The rampant substandard conditions that prevail in these abusive businesses affect all workers by worsening working conditions across whole industries and sectors of the economy.

Indeed, where undocumented workers cannot complain about workplace conditions to their employers, it is likely that U.S. citizen and documented workers are being prevented from doing so as well. For example, U.S. citizen and documented workers at Terra Universal were frequently told that if they did not like their work conditions, they could leave, as plenty of other workers were lined up for their jobs.

Poor working conditions can also accompany human trafficking, as in the case of Signal International, a marine and fabrication company with shipyards in Mississippi, Texas, and Alabama against which (along with Signal's co-conspirators) the ACLU and allied co-counsel have filed suit for subjecting more than 500 Indian men to "a campaign of psychological abuse, coercion, and fraud designed to render Plaintiffs and other class members afraid, intimidated, and unable to leave Signal's employ."²⁵ Signal's actions included the company's own "raid" against workers advocating for their rights, after consultation with ICE. Signal personnel engaged in "forced physical restraint, abuse of the legal process, [and] detention and attempted deportation of the two Indian workers . . . as a forceful demonstration to the [others] that resistance to Signal's rules and demands was unacceptable and would result in similar punishment."²⁶

Third, in recent years, ICE has conducted numerous immigration raids without coordinating, consulting with, or even informing state and federal labor enforcement agencies, including cases when ICE knew of ongoing labor disputes and workplace violations. By taking such unilateral action, ICE's worksite raids significantly undermine and frustrate the efforts of state and federal labor enforcement agencies to improve working conditions, including the very conditions that perpetuate the hiring of unauthorized workers. To give two examples:

- At the time of the Terra Universal raid, ICE knew about significant workplace violations, but only informed the Department of Labor (DOL) of its planned action a day before the raid. DOL subsequently investigated the company, but that investigation has been impeded by ICE's efforts to deport victims and witnesses, as well as ICE's confiscation of the company's employment records.

²⁵ Second Amended Complaint, *David et al. v. Signal Int'l LLC*, No. 08-cv-01220 (E.D. La. Nov. 23, 2010), available at http://www.aclu.org/files/assets/david_secondamendedcomplaint_20101123.pdf

²⁶ Plaintiffs' Memorandum of Law in Support of Their Supplemental Motion for Class certification, *David et al. v. Signal Int'l LLC*, No. 08-cv-01220 (E.D. La. Feb. 1, 2011), available at <http://www.aclu.org/files/assets/NY3-3077324v1-ClassCertMemoofLaw.pdf>

- At the time of the Agriprocessors raid, DOL and its Iowa state counterpart had investigations pending. In addition, the United Food and Commercial Workers International Union (UFCW) was engaged in an ongoing organizing drive. The union informed ICE of these three ongoing efforts, stating that “any potential ICE action could not only have a chilling effect over the existing workforce . . . but [] could also result in employees leaving the plant, thereby interfering with the DOL’s investigation.”²⁷ One week later, however, ICE raided the plant, without, according to DOL, giving any advance notice.²⁸ Mark Krikorian’s testimony to the Subcommittee with respect to Agriprocessors omits this full context of labor enforcement and union organizing.²⁹

The Immigration and Naturalization Service (INS), ICE’s predecessor, adopted policies in the late 1990s designed to ensure that immigration enforcement is not conducted at the expense of labor rights. Internal guidelines under Operating Instruction 287.3a (now designated as ICE Special Agents Field Manual § 33.14(h)) were adopted to address the impact that immigration enforcement can have on workers’ efforts to exercise and enforce their rights. The guidelines direct ICE agents to take certain steps before initiating an enforcement action “[w]hen [ICE] has reason to suspect that a source might be providing information about potential undocumented aliens in order to interfere with the rights of the employees in the middle of a labor dispute or for retaliatory purposes.”³⁰

²⁷ Raids on Workers, *supra*, at 40; *see also id.* at 36 (describing the 2007 raid on the Michael Bianco, Inc. (MBI) factory in Boston, Massachusetts).

²⁸ Iced Out, *supra*, at 24.

²⁹ Mark Krikorian, Testimony to the House Judiciary Subcommittee on Immigration Policy and Enforcement, Hearing on “ICE Worksite Enforcement - Up to the Job?” (Jan. 26, 2011). The testimony also contends that the government arrested “400 illegal immigrants on a variety of genuine criminal charges. . . . [T]hese were people engaged in serious criminal activity.” To characterize the criminal proceedings that ensued after the Postville raid in this fashion is grossly misleading. The Supreme Court subsequently ruled unanimously that the felony charges brought by prosecutors against the detained immigrant workers were not applicable to their actions. *See Flores-Figueroa v. United States*, 129 S. Ct. 1886 (2009). A federal judge who sentenced 57 of the workers based on plea bargains recently commented that “I thought [the prosecutors’] insisting on each of the defendants serving a five-month sentence was a tragedy. . . . I found the plea agreement personally and professionally to be offensive, and I thought it was a travesty. And I was embarrassed to be a United States District Court judge that day. . . . To have 57 people in a row that don’t even have a single misdemeanor among them is unheard of in federal court. So if anybody deserved mercy and compassion and fairness and justice, these 57 did. And I don’t believe they received it, even though I was the one who imposed sentence, because my hands were tied by the Department of Justice in the case.” Tony Leys, “Postville documentary criticizes sentencings,” *Des Moines Register* (Feb. 5, 2011).

³⁰ *Matter of Herrera-Priego*, Executive Office for Immigration Review (July 10, 2003) (on file with ACLU) (describing testimony of Alexander Aleinikoff, former INS general counsel).

In 1998, INS and DOL adopted a Memorandum of Understanding (MOU) aimed in part at “reduc[ing] the economic incentives for the employment of unauthorized workers . . . by increasing employers’ compliance with minimum labor standards.”³¹ The MOU directs DOL and INS to “develop and implement policies consistent with INS Operations [*sic*] Instruction 287.3a that avoid inappropriate worksite interventions where it is known or reasonably suspected that a labor dispute is occurring and the intervention may, or may be sought so as to, interfere in the dispute.”³² ICE has an obligation to operate consistently with these principles.

Fourth, immigration raids erect barriers to employer accountability and workers’ access to justice. By arresting and placing workers in removal proceedings prior to the conclusion of any criminal or civil investigation of an employer, ICE raids can result in the deportation of victims and witnesses before they are able to testify. Raids interfere with victims’ and witnesses’ willingness and ability to cooperate with prosecutors and investigators. Immigration raids also have a chilling effect, due to fear of retaliation, on workers’ right to bring civil lawsuits against their employers, or to participate in opt-in collective actions under the Fair Labor Standards Act (FLSA). For example, on April 16, 2008, ICE agents raided Pilgrim’s Pride, a poultry plant in Chattanooga, Tennessee, which employed 1,350 workers. Prior to the raid, attorneys had been developing a wage-and-hour class action lawsuit on the workers’ behalf. After the raid, however, workers – even those authorized to work – were afraid to join the class action for fear that ICE would retaliate against their family members.³³

It is vital to look at raids’ consequences holistically, at how they interfere with workers’ rights and disrupt labor enforcement. They also have devastating impacts on local communities. In his testimony, Mark Krikorian asked the Subcommittee to focus on the 8 percent wage and bonus increase that resulted from the raid on Swift & Company in Marshalltown, Iowa.³⁴ This uni-dimensional approach ignores a more comprehensive analysis’s conclusion that this “ICE raid contributed to a localized economic recession for perhaps six months to a year after the

³¹ “Memorandum of Understanding Between the Immigration and Naturalization Service, Department of Justice and the Employment Standards Administration, Department of Labor.” (Nov. 23, 1998), available at <http://www.dol.gov/whd/whatsnew/mou/nov98mou.htm>

³² *Id.*

³³ *Iced Out*, *supra*, at 26.

³⁴ “Worksite Enforcement: Audits Are Not Enough,” 2 (Jan. 26, 2011).

raid.”³⁵ More generally, those who look carefully at the aftermath of raids understand that “immigration enforcement actions have lasting consequences that can harm the financial, human, and social capital of communities.”³⁶

VI. Conclusion

ICE raids that target workers for arrest and deportation harm all workers by worsening labor conditions for all workers. They interfere with workers’ exercise of labor rights and frustrate government efforts to curb abusive employers. Unscrupulous employers are motivated by raids to employ undocumented workers in substandard conditions because the employers’ credible threats of being able to summon immigration enforcement prevent workers from complaining. State and federal labor agencies working to enforce labor and employment laws are stymied by ICE taking actions, often unconstitutionally, that damage their investigations and hamper the creation of a climate in which workers can trust they have a safe outlet to report wage, hour, and safety violations.

ICE, in coordination with its government partners, should take a worker-centred approach to enforcement, one that aims to allow all workers to benefit from proper labor conditions and avoid abusive employers.

³⁵ Immigration Policy Center, “After the Raid is Over: Marshalltown, Iowa and the Consequences of Worksite Enforcement Raids.” (Jan. 25, 2011), *available at* <http://immigrationpolicy.org/special-reports/after-raid-over-marshalltown-iowa-and-consequences-worksite-enforcement-raids>

³⁶ *Id.*

Exhibit 2



Civil Rights Groups File Lawsuit Over Van Nuys Workplace Raid After ICE Bars Attorneys From Immigration Interviews

February 14, 2008

FOR IMMEDIATE RELEASE
CONTACT: media@aclu.org

LOS ANGELES — The ACLU of Southern California, National Lawyers Guild, and National Immigration Law Center asked a federal judge today to order U.S. Immigration and Customs Enforcement to allow attorneys for workers arrested in last Thursday's raid in Van Nuys to represent their clients at their immigration interviews. Over the past few days, ICE officials barred attorneys from accompanying their clients to the hearings, where workers were interviewed and then charged with immigration violations.

ICE's policy violates federal rules that allow people being interviewed by immigration agents to be accompanied by an attorney, at no expense to the government. Last week, the ACLU/SC and other groups offered to provide free legal screenings and assistance to nearly 200 people arrested in the raid.

"ICE has repeatedly prevented our attorneys from accompanying their clients into these interviews," said Stacy Tolchin, an attorney and member of the National Lawyers Guild. "We are deeply concerned that ICE is trying to deport people without due process, as required under our nation's basic laws."

Ahilan Arulanantham, a staff attorney at the ACLU/SC, added that "federal law makes crystal clear what should have been obvious — in our country, people have a right to bring an attorney with them when they face interrogation by government agents. Our lawsuit seeks to hold the government accountable for its blatantly illegal conduct."

The groups are also concerned that ICE agents are using coercive tactics against detainees during interviews to obtain information that can later be used against them. In a letter last week to ICE Field Office Director James Hayes, the ACLU/SC and other civil rights groups informed ICE of the offer of free legal representation and asked that ICE not deport these workers or ask them to give up their rights to representation until they had been given the opportunity to meet with attorneys.

The ACLU/SC and other groups are investigating potential civil rights violations during the raid, and detained workers and witnesses have reported evidence potential violations, including:

- Mass handcuffing of workers, even though there was no threat of violence and agents had no evidence workers posed a threat to their safety.
- Workers who attempted to call family members to arrange child care or seek assistance told advocates that agents prevented them from using their cell phones.
- Threatening gestures by ICE agents, such as holding their hands to their guns

Published on *American Civil Liberties Union* (<http://www.aclu.org>)

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Exhibit 3

The New York Times

U.S.

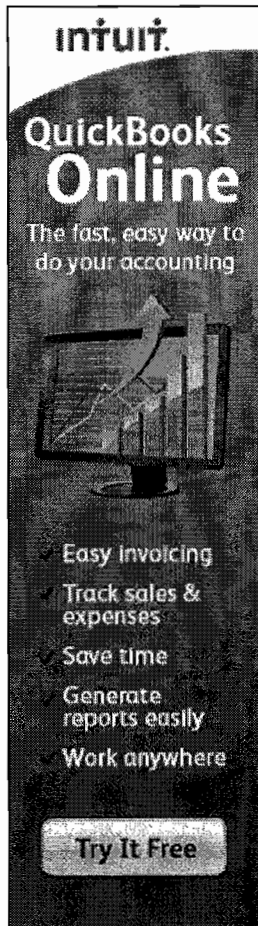
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Los Angeles Sweatshops Are Thriving, Experts Say

By KENNETH B. NOBLE
Published: August 05, 1995

Almost one-fifth of the garment industry workers in Los Angeles, many of them foreigners who came to the United States to escape the crushing poverty of their homelands, are toiling in unregulated, sweatshop conditions, labor officials, economists and union organizers said today.

Exactly how many find themselves bound to employers who take advantage of their legal status, naivete and cultural alienation is not known. But experts said their numbers were flourishing despite a host of regulations on labor, health, safety and immigration designed to flush them out and shut their employers down.

"I have heard things like this for years," said Mark Rosenbaum, legal director of the Los Angeles office of the American Civil Liberties Union. "It's one of these dirty little secrets that everyone knows about."

On Wednesday, state agents raided a makeshift garment factory in El Monte, Calif., where they found nearly 70 workers from Thailand who lived and worked, sometimes for years, in conditions the agents described as close to servitude.

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Federal immigration officials acknowledged today that they knew of conditions at the El Monte factory nearly three years ago but that they took no action until state officials got a similar tip six weeks ago.

"The state solicited our participation to join them when they issued the search warrant, and we agreed," said Virginia Kice, a spokeswoman for the Immigration and Naturalization Service. "But later our people felt that it was inappropriate to be present for a state warrant. We thought that maybe the case would be thrown out for a technicality."

Victoria Bradshaw, California's Labor Commissioner, today called the El Monte situation an aberration. She added, "I don't believe it's widespread."

Indeed, formal complaints about involuntary servitude are relatively rare. Since 1990, the Justice Department has prosecuted 29 people for violations of the antislavery laws, and 26 were convicted or pleaded guilty. Most of the cases involved migrant workers in Eastern states, not Asians in California.

Still, while brutal conditions like those found in the El Monte case are unusual, thousands of other workers often find themselves trapped in bleak, unregulated workplaces.

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From
ALEXANDER PAYNE
Director of
SIDEWAYS

Of the estimated 120,000 garment industry workers in the Los Angeles area, 35,000 do 20,000 work in unregulated, sweatshop conditions, said Jack Kyser, chief economist of the Economic Development Corporation of Los Angeles.

"A lot of times you get people coming from offshore and setting up these shops, because it's a very easy industry to get into and you don't need a lot of capital," Mr. Kyser said. "But in many cases they don't understand all the rules and regulations they have to comply with and all the forms they have to fill out.

"They're probably doing business like they did it in the country of their origin, but in the United States, they're breaking the law."

In a random survey last year of 69 California garment manufacturers and contractors, the state Labor Department found rampant violations of safety and labor laws, including cases of employers locking fire exits and children as young as 13 working nine hours a day.

The survey also showed that 50 percent of employers violated rules requiring them to pay workers the minimum wage, 68 percent violated overtime requirements, and 92.8 percent violated various health and safety regulations. Workplace conditions are likely to be worst in makeshift factories that operate outside the law.

Joseph Rodriguez, executive director of the Garment Contractors Association, said: "Something like we saw in El Monte, with the slavery and barbed wire, is extremely rare. Unfortunately, it is not rare to find illegal contractors who are not registered with the state."

He added: "The company that isn't registered is probably violating minimum wage laws or overtime laws. That's what gives our industry a bad name."

At the El Monte factory, workers sewed strips of ready-to-wear garments, some of which ended up in major stores on the East Coast like Macy's, Hecht's and Filene's, Ms. Bradshaw said today. Spokesmen for several companies said today that they had no knowledge that laws were being broken.

Jim Abrams, a spokesman for May Department Stores, owner of both Filene's and Hecht's, said, "Our purchase orders clearly require vendors to comply with the Labor Standards Act and all applicable regulations."

He added, "We are in the process of attempting to ascertain if in fact this incident in El Monte involves merchandise being manufactured for delivery to any May division and, if so, the vendor involved."

Carol Sanger, a spokeswoman for Federated Department Stores, the owner of Macy's, said: "The first we heard about it was what we read in the paper this morning. And we have tried to get in touch with the appropriate authorities in California to find out what exactly it is that they found, because we have no knowledge of the operation, no record of ever doing business with any vendor or subcontractor with any operations in El Monte.

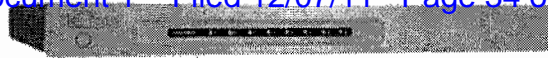
"The situation is appalling and would not be anything we condone."

Chanchanit Mortorell, executive director of the Thai Community Development Center in Los Angeles and one of the first people to see the El Monte factory after the raid, said there were numerous violations of health and safety laws at the site.

"When the authorities asked the workers to open the doors, they couldn't," she said. "They were locked from the outside. The police had to ax down each door. Everyone was shocked and terrified."

Another community leader, Nongyao Varanond, president of Thai Inc., a service program, said that of the shops she had visited, "only a few are like the one in El Monte." She added, "The others are usually in good condition, but the workers are paid less than the minimum wage.

"They don't have any place to go," Ms. Varanond said. "Where else can they find a job here? All of them are illegal."



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Exhibit 4



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**RE: Request under the Freedom of Information Act and Privacy Act
Fee Waiver Requested**

Dear FOIA Officer:

This letter constitutes a request for records made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 442, and the Privacy Act, 5 U.S.C. § 552a, by the American Civil Liberties Union of Southern California ("ACLU-SC") on behalf of itself and Osfel Andrade Castillon (hereinafter "Requestors"). See Exhibit A (Privacy Act authorization for Mr. Andrade).

Requestors seek records related to the Immigration and Customs Enforcement's ("ICE") worksite enforcement operation at Terra Universal, Inc. ("Terra Universal") on June 29, 2010. Requestors make this request for records because of their concerns about the manner in which ICE conducted the enforcement operation, and the treatment of the persons arrested and detained as a result of the operation. Requestors seek to determine whether the enforcement action and the treatment of arrested persons complied with applicable federal, state, and local statutes and regulations, as well as with the agency's policies, procedures and internal guidelines.

FOIA Officer, January 14, 2011
Page 2

We note that in the past ICE has disclosed records related to its worksite enforcement actions. Following a worksite raid at MicroEnterprise Solutions in Van Nuys, California in February 2008, ACLU-SC - along with several other nonprofit organizations - submitted a FOIA request seeking records related to the enforcement action. After ACLU-SC filed a federal lawsuit seeking to compel ICE to disclose the requested records, ICE ultimately agreed to disclose thousands of pages of documents - many of which fall within the same categories of records sought here. *See National Immigration Law Center v. DHS*, Case No CV08-07092 (DDP) (C.D. Cal. 2008). Given that experience, we hope and expect that ICE will promptly respond to our request and disclose the requested records, so that both parties may avoid needless litigation.

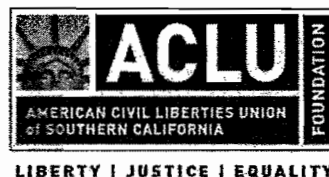
REQUESTORS

ACLU/SC is a non-profit organization dedicated to defending and securing the rights granted by the U.S. Constitution and Bill of Rights. ACLU/SC's work focuses on the First Amendment, equal protection, due process, privacy, and furthering civil rights for disadvantaged groups. As part of its work, ACLU/SC disseminates information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials.

On the morning of June 29, 2010, approximately 40 ICE agents raided the manufacturing facility of Terra Universal, located at 800 South Raymond Avenue, Fullerton, CA, 92831. Upon entering the premises of the factory, ICE agents blocked all exits, stopped all production, and ordered all workers to gather in the center of the plant. ICE agents asked the workers to form three groups according to their citizenship or immigration status-citizens, lawful permanent residents ("LPR"), and undocumented immigrants. ICE agents came with a list of workers suspected of being undocumented. The Los Angeles Times reported that the search warrant specified that agents were looking for job applications, employment verification forms, Social Security Administration correspondence, and company tax records. *See Immigration Raid at Fullerton Factory Leads to 43 Arrests*, Los Angeles Times (July 1, 2010).

Workers were questioned on-site about their immigration status and those who admitted to being undocumented were handcuffed. In total, 43 workers were arrested and transported to an ICE processing center in Santa Ana for further questioning. Later that afternoon, attorneys from ACLU-SC arrived at the Santa Ana federal building but were denied access to the detained workers by DHS staff. After being questioned and issued Notices to Appear ("NTA"), the workers were released.

Terra Universal is currently under investigation by ICE and the U.S. Attorney's Office for criminal and civil immigration violations. The Department of Labor is also investigating Terra Universal for labor and employment violations. In August 2010, ACLU-SC filed a federal class-action lawsuit on behalf of current and former Terra Universal workers, alleging employment and other workplace violations at Terra Universal. *See Morales v. Terra Universal*,



FOIA Officer, January 14, 2011
Page 3

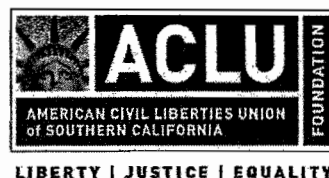
Inc., CV10-6490 (PA) (C.D. Cal 2010). The case is currently pending in the Central District of California. ACLU/SC represents Mr. Andrade, who is one of the named Plaintiffs, in that suit.

Osfel Andrade Castillon is a former Terra Universal employee and named Plaintiff in the class action lawsuit against Terra Universal. On November 10, 2010, ICE arrested Mr. Andrade at his home in Anaheim, California. Following his arrest, ICE agents questioned Mr. Andrade about a variety of matters, including whether he had attempted to aid and abet the escape of Terra Universal workers on the day of the enforcement action. ICE agents indicated that they had been informed that Mr. Andrade had sent a text message to a Terra Universal employee in which he warned the employee about the raid. Following questioning in Santa Ana, Mr. Andrade was placed in detention at Mira Loma Detention Center in Lancaster. Mr. Andrade was later released on bail and remains in active removal proceedings.

THE REQUEST FOR RECORDS

We seek disclosure of any and all records, which were prepared, received, transmitted, collected and/or maintained by the ICE or the Department of Homeland Security ("DHS"), or any sub-component of the DHS, relating to or concerning the following:

- 1) ICE policies, procedures and practices with respect to worksite immigration enforcement in effect or issued from January 2010 until the present, including but not limited to:
 - a. ICE policies, procedures and practices with respect to the arrest, questioning, detention and initiation of removal proceedings against workers arrested during worksite enforcement actions.
 - b. ICE policies, procedures and practices with respect to humanitarian guidelines for the release of workers arrested during worksite enforcement actions.
 - c. ICE priorities for worksite immigration enforcement actions.
- 2) **Terra Universal**, including but not limited to:
 - a. Records referenced in the *Worksite Enforcement Policies Memorandum, Memo*, Pearson, Exec. Assoc. Comm. (HQOPS 50/19-P) (May 22, 1998), Including but not limited to the pre-operation plans, worksite enforcement operation plans, and pre-operation briefings pertaining to ICE's worksite enforcement operation at Terra Universal.
 - b. Any and all communications or records between ICE and the Department of Labor related to Terra Universal, including, but not limited to, ICE's



FOIA Officer, January 14, 2011
Page 4

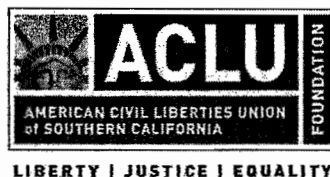
- investigation and worksite enforcement action.
- c. Any and all communications or records between ICE and any state or local law enforcement or other governmental agencies relating to Terra Universal.
 - d. Any and all communications or records between ICE and any Terra Universal manager, supervisor, employee and/or agent.
 - e. Copies of any and all warrants (either administrative or criminal) issued and served on an agent of Terra Universal relating to the worksite enforcement operation.
 - f. Any and all communications or records relating to informants at Terra Universal.
- 3) Any and all records relating to or concerning **Osfel Andrade Castillon** (A 095-773-244).

As should be apparent from the plain language of the second and third request, Requestors seek any and all records relating to or concerning Terra Universal, Inc. and Osfel Andrade Castillon. We seek not only the contents of any main files bearing those names, but also any records relating to or concerning Terra Universal and Osfel Andrade that may be cross-listed, cross-referenced, or contained in the main file pertaining to another individual or entity. This request seeks the entirety of any document in which appear the names, or any variations of the names, Terra Universal and Osfel Andrade.

LIMITATION OR WAIVER OF SEARCH AND REVIEW FEES

We request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by... a representative of the news media ...") and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to "representatives of the news media"). The information sought in this request is not sought for a commercial purpose. The ACLU-SC is a non-profit organization that intends to disseminate the information gathered by this request to the public at no cost.

The "term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). The statutory definition does not require that the requester is a member of the traditional media. As long as the requester meets the definition in any aspect of its work, it qualifies for limitation of fees under this section of the statute.



FOIA Officer, January 14, 2011
Page 5

For the reasons stated above with respect to expedited processing, the ACLU-SC qualifies as "representative of the news media" under the statutory definition, because it routinely gathers information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the public. *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Accordingly, any fees charged must be limited to duplication costs.

WAIVER OR REDUCTION OF ALL COSTS

We request a waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester"); *see also* 6 C.F.R. § 5.11(k).

The public interest fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). The Requestors need not demonstrate that the records would contain evidence of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, good or bad. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003).

Disclosure of the information sought is in the public interest and will contribute significantly to public understanding of the federal government's policies and practices with respect to ICE's worksite enforcement. As shown by the news reporting of the Terra Universal enforcement action, these issues are of intense public concern. *See, e.g., Immigration Raid at Fullerton Factory Leads to 43 Arrests*, Los Angeles Times (July 1, 2010); *ICE Agents Raid Manufacturer in Fullerton*, Orange County Register (June 29, 2010); *ICE Arrests 43 in Fullerton's Raid*, Los Angeles Examiner (June 30, 2010); *ICE Raids OC Manufacturing Plant, 43 in Custody*, Associated Press (June 29, 2010).

The requested records relate directly to operations or activities of the government that potentially impact or infringe fundamental rights and freedoms. The records are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost, and through meetings with members and affected communities. As demonstrated above, the ACLU-SC has both the intent and ability to convey any information obtained through this request to the public.

The Requestors state "with reasonable specificity that [their] request pertains to operations of the government," and "the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having



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FOIA Officer, January 14, 2011
Page 6

explained with reasonable specificity how those documents would increase public knowledge of the functions of the government." *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Health and Human Services*, 481 F. Supp. 2d 99, 107-109 (D.D.C. 2006).

In the event a waiver or reduction of costs is denied, please notify me in advance if the anticipated costs exceed \$100.

CONCLUSION

If this request is denied in whole or part, please justify all deletions by reference to specific FOIA exemptions. We expect you to release all segregable portions of otherwise exempt material. For example, we expect you to redact names of individuals for whom privacy waivers are not enclosed, if such redaction is required by the Privacy Act or other law, and release any otherwise disclosable records as redacted. We also expect that this FOIA request will be processed in accordance with the presumption of disclosure and President Obama's directive to federal agencies on January 26, 2009. Pres. Obama, Memo for the Heads of Exec. Offices and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009) ("The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.").

We reserve the right to appeal any decision relating to this FOIA request, including but not limited to the decision to withhold any information, or to deny a waiver or reduction of fees. We look forward to your reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If you have questions, please contact Jennie Pasquarella at 213-977-5236 or via e-mail at jpasquarella@aclu-sc.org. Thank you in advance for your timely consideration of this request. Please furnish records as soon as they are identified to the undersigned at:

ACLU of Southern California
1313 W. Eighth Street
Los Angeles, CA 90017

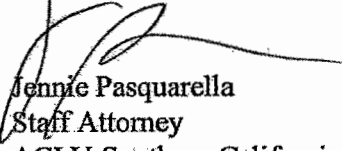


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FOIA Officer, January 14, 2011
Page 7

We certify that the information provided supporting the request for expedited processing is true and correct to the best of our knowledge and belief.

Sincerely,


Jennie Pasquarella
Staff Attorney
ACLU-Southern California
1313 West Eighth Street
Los Angeles, CA 90017
(213)-977-5236
jpasquarella@aclu-sc.org



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Authorization

I, Osfel Andrade hereby authorize attorneys from the ACLU of Southern California, 1313 West 8th Street, Los Angeles, CA 90017, to submit a request under the Freedom of Information Act and the Privacy Act to the federal government and to receive responsive documents on my behalf.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 15, 2011, in Anaheim, California.

Osfel Andrade
Name (print)

2205 W. Broadway #A116
Address

Anaheim CA 92804
City, State Zip


Signature

Exhibit 5

U.S Department of Homeland Security
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

January 31, 2011

JENNIE PASOUARELLA
ACLU
1313 WEST EIGHT STREET
LOS ANGELES, CA 90017

Re: 2011FOIA4894

Dear Ms. Pasquarella :

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 19, 2011, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on January 28, 2011. Specifically, you requested records regarding worksite enforcement operation at Terra Universal, Inc. on June 29, 2010.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1523 open requests ahead of yours.

As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records. The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor. If any responsive records are located, we will consider

these factors in our evaluation of your request for a fee waiver.

In the event that your fee waiver is denied, we shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. As a non-commercial requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate of the searcher. You will be promptly notified once a determination is made regarding your fee waiver request.

Per section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. We will make every effort to comply with your request in a timely manner; however, there are currently 1523 open requests ahead of yours. Nevertheless, please be assured that one of the processors in our office will respond to your request as expeditiously as possible.

Your request has been assigned reference number **2011FOIA4894**. Please refer to this identifier in any future correspondence. You may contact this office at (202) 732-0300 or (866) 633-1182.

Sincerely,



Catrina M. Pavlik-Keenan

FOIA Officer 

U.S. Department of Homeland Security
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

January 31, 2011

JENNIE PASQUARELLA
ACLU
1313 WEST EIGHT STREET
LOS ANGELES, CA 90017

Re: 2011FOIA4894

Dear Ms. Pasquarella:

This acknowledges receipt of your January 19, 2011, Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), for records regarding worksite enforcement operation at Terra Universal, Inc. on June 29, 2010. Your request was received in this office on January 28, 2011.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1523 open requests ahead of yours.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2011FOIA4894**. Please refer to this identifier in any future correspondence. You may contact this office at (202) 732-0300 or 1-866-633-1182.

Sincerely,




Catrina M. Pavlik-Keenan
FOIA Officer


Exhibit 6

U.S. Department of Homeland Security
800 North Capitol Street NW, #585
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

February 18, 2011

Ms. Jennie Pasquarella
ACLU of Southern California
1313 West Eighth Street
Los Angeles, CA 90017

RE: ICE FOIA Case Number 2011FOIA4894

Dear Ms. Pasquarella:

This is in further regard to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 19, 2011. You have requested copies of records related to ICE's worksite enforcement operation at Terra Universal, Inc. on June 29, 2010.

In your letter, you have requested news media status and a fee waiver.

Regarding your fee status request, I have determined to deny your request for "representative of the news media" status. DHS FOIA regulations specifically define "representative of the news media" as "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public."¹ Based on the information contained in your letter, I am denying your request for this fee status because you have not presented a convincing argument that ACLU is an entity organized and operated to publish or broadcast news to the public.

Although your request for "representative of the news media" status is denied, you are entitled to two hours of search time and 100 pages of releasable records free of any charges.² Should search time exceed two hours and duplication costs exceed 100 pages, we will charge you in accordance with DHS FOIA regulations. In accordance with DHS regulations, this letter also confirms your agreement to incur all applicable fees involved in the processing of your request, up to the amount of \$25.00.³

As I informed you in my January 31, 2011 letter, I have determined to hold your request for a fee waiver in abeyance pending the review and quantification of responsive records. Provisions of the Act allow us to recover part of the cost of complying with your request. Should ICE assess any search or duplication fees, we shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to *non-commercial* requestors. As a non-commercial requestor, you are entitled to the first 100 pages, and the first two hours of search time, at no cost. After that, you will be charged 10-cents a page for duplication, and a per quarter-hour rate for search time. The rate

¹ 6 C.F.R. §§ 5.11(b)(6).

² 6 C.F.R. § 5.11(d)(3).

³ 6 C.F.R. § 5.11.

for which you will be charged search time – \$4.00, \$7.00, and/or \$10.25 – is based on the hourly wage of the personnel completing the search. We will construe the submission of your request as an agreement to pay up to a total of \$25.00 in fees, and you will be contacted before any further fees are accrued.

You have the right to appeal ICE's determination to deny your request for media status. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter to the following address:

U.S. Immigration Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
800 North Capitol Street, N.W., Room 585
Washington, D.C. 20536-5009

Your envelope and letter should be marked "FOIA Appeal." Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.9.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email that entity at ogis@nara.gov or call 877-684-6448.

If you need to contact our office again about this matter, please refer to FOIA case number 2011FOIA4894. This office can be reached at (202) 732-0300.

Sincerely,

A handwritten signature in black ink, appearing to read "MPK", followed by the word "FOR" in a smaller, handwritten font.

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosures: January 19, 2011 FOIA Request
January 13, 2011 ICE Acknowledgement Letter

Exhibit 7



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February 22, 2011

Chair
Stephen Rohde

President
Douglas Mirell

Chairs Emeriti
Danny Goldberg
Allan K. Jonas
Burt Lancaster*
Irving Lichtenstein, MD*
Jarl Mohn
Laurie Ostrow*
Stanley K. Sheinbaum
*deceased

Executive Director
Ramona Ripston

Chief Counsel
Mark D. Rosenbaum

Deputy Executive Director
James Gilliam

Chief Financial Officer
Brenda Maul

Communications Director
Eileen White Read

Development Director
Sandy Graham-Jones

Legal Director
Hector O. Villagra

**Managing Attorney &
Manheim Family Attorney
for First Amendment Rights**
Peter J. Eliasberg

U.S. Immigration and Customs Enforcement
800 North Capitol Street, N.W.
5th Floor, Suite 585
Washington, D.C. 20536-5009
Fax: 202-732-0310
E-mail: ice-foia@dhs.gov

RE: FOIA Request 2011FOIA4894

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6), of your decision to hold in abeyance our fee waiver request and/or your decision to deny our fee waiver request.

On January 19, 2011, the ACLU of Southern California submitted a FOIA request for disclosure of all records relating to ICE's worksite enforcement operation at Terra Universal, Inc. on June 29, 2010. *See* Exhibit A (FOIA Request).

In a letter dated January 31, 2011, ICE informed us that our request for a fee waiver would be held in abeyance "pending the quantification of records." Exhibit B (ICE Letter 1) at 1. However, in a separate letter dated the same day, ICE stated that "[w]e shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters" and listed duplication and search rates. Exhibit C (ICE Letter 2) at 1. The letter did not state that ICE had made a determination that we were ineligible for a fee waiver or the basis for such a determination, contrary to its legal obligation to provide the "reasons" for its determination whether to comply with a request. 5 U.S.C. § 552(a)(6)(A)(i). For this reason, we believe that the letter may have been issued in error. However, in an abundance of caution, this letter constitutes an appeal of the putative denial.

I. The FOIA Requires That Fee Waivers Be Adjudicated Promptly Upon Receipt Of A Request

Our request for a fee waiver must be decided before searching for responsive records. "A fee waiver request should be evaluated based on the face

FOIA Officer
February 22, 2011

Page 2

of the request and the reasons given by the requester in support of the waiver,” not the contents of requested records. *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994). The refusal to rule on a fee waiver before a search for responsive records has been conducted wrongly forces a qualified requester either to accept a potentially incomplete two-hour search or pay substantial search fees that must be waived as a matter of law. Indeed, if “the request is for records that should be disclosed in the public interest, the agency should not be allowed to charge for searching the records, because the requester is acting in the public interest by attempting to obtain the records.” *Id.*

Whether or not we are entitled to a fee waiver does not depend on the volume and content of responsive records. First, the volume of responsive records is irrelevant to our entitlement to a waiver. In fact, the “substantive contents of even a single document may substantially enrich the public domain and justify a fee waiver.” *Project on Military Procurement v. Dep’t of Navy*, 710 F. Supp. 362, 366 (D.D.C. 1989).

Second, the content of responsive records is also irrelevant to our entitlement to a waiver. A decision on a fee waiver must be made on the face of the request, not on whether the records actually exist or what they actually say. Indeed, courts routinely decide fee waiver issues independently of the content of the documents.

Instead, a requester need only state “with reasonable specificity that its request pertains to operations of the government,” and “the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government.” *Citizens for Responsibility and Ethics in Washington v. U.S. Dep’t of Health and Human Services*, 481 F. Supp. 2d 99, 107-09 (D.D.C. 2006). The requester must demonstrate whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, good or bad. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (“the question here is not whether . . . disclosure of the requested documents is likely to contribute to public understanding of IRS operations – a goal that disclosure will promote regardless of what the documents reveal.”).

To the extent Department of Homeland Security regulations condition a fee waiver on the substance of the records that may be disclosed, *see* 6 C.F.R. § 5.11(k)(2), the regulations are contrary to the Freedom of Information Act. Courts do “not defer to an agency’s view of FOIA’s meaning.” *Tax Analysts v. IRS*, 117 F.3d 607, 613 (D.C. Cir. 1997).

II. A Fee Waiver Is Strongly Warranted

The DHS FOIA regulations provide that “[r]ecords responsive to a request will be furnished without charge . . . where a component determines, based on all available information, that the requester has demonstrated that: (i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the



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FOIA Officer
February 22, 2011

Page 3

operations or activities of the government; and (ii) Disclosure of the information is not primarily in the commercial interest of the requester.” 6 C.F.R. § 5.11(k)(1). Because our request does not involve a commercial interest, the fee waiver determination turns on whether the requested information is in the public interest.

The determination of whether the requested information is in the public interest, and thus falls within 6 C.F.R. § 5.11(k)(1)(i), is based on four factors:

- (1) Whether the subject of the requested records concerns “the operations or activities of the government.”
- (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities.
- (3) Whether disclosure of the requested information will contribute to “public understanding.” The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.
- (4) Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. “The public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ‘important’ enough to be made public.

6 C.F.R. § 5.11(k)(2)(i-iv).

We clearly meet these standards for a public interest fee waiver. Disclosure of the information sought is in the public interest and will contribute significantly to public understanding of the ICE’s policies and practices with respect to worksite enforcement. As is demonstrated by the news articles cited in our FOIA request, the Terra Universal enforcement action has been – and remains – a matter of public concern. There have been significant questions raised about whether ICE’s actions were consistent with internal ICE policy and complied with applicable state and federal law.

Further, ICE’s worksite enforcement strategy has been a subject of intense public scrutiny, most recently illustrated by a hearing held by the Committee on the Judiciary of the United States House of Representatives on January 26, 2011, entitled “ICE Worksite Enforcement - Up to the Job?” See http://judiciary.house.gov/hearings/hear_01262011.html.



FOIA Officer
February 22, 2011

Page 4

Disclosure of the requested records would clearly contribute to the public's understanding of ICE worksite operations and activities, fitting squarely within the fee waiver requirements. *See* 6 C.F.R. § 5.11(k)(1)(i).

Additionally, the ACLU/SC is uniquely well-positioned to "effectively convey information to the public" because of our expertise in the area of immigration enforcement and because we regularly disseminate information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. 6 C.F.R. § 5.11(k)(1)(i)(3). *See also Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees).

Finally, we observe that the public interest fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

I look forward to a written response to this appeal by the close of the statutory time period, which is within twenty working days. *See* 5 U.S.C. § 552(a)(6)(A)(ii). Thank you for your prompt attention to this matter. If you have any questions, please contact me at (213) 977-5236.

Sincerely,

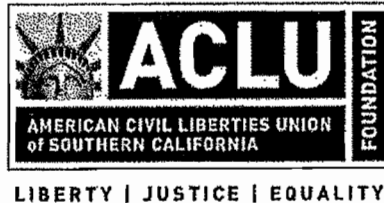


Jennie Pasquarella *with permission*
Staff Attorney



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EXHIBIT A



January 19, 2011

Chair
Stephen Rohde

President
Douglas Mirell

Chairs Emeriti
Danny Goldberg
Allan K. Jonas

Burt Lancaster*
Irving Lichtenstein, MD*
Jarl Mohn
Laurie Ostrow*
Stanley K. Sheinbaum
*deceased

Executive Director
Ramona Ripston

Chief Counsel
Mark D. Rosenbaum

Deputy Executive Director
James Gilliam

Chief Financial Officer
Brenda Mault

Communications Director
Sandra Hernandez

Development Director
Sandy Graham-Jones

Legal Director
Hector O. Villagra

**Managing Attorney &
Manheim Family Attorney
for First Amendment Rights**
Peter J. Eliasberg

U.S. Department of Homeland Security
Privacy Office
245 Murray Drive SW, Building 410
STOP-0655
Washington, D.C. 20528-0655
Fax: 703-235-0443
E-mail: foia@hq.dhs.gov

U.S. Immigration and Customs Enforcement
800 North Capitol Street, N.W.
5th Floor, Suite 585
Washington, D.C. 20536-5009
Fax: 202-732-0310
E-mail: ice-foia@dhs.gov

**RE: Request under the Freedom of Information Act and Privacy Act
Fee Waiver Requested**

Dear FOIA Officer:

This letter constitutes a request for records made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 442, and the Privacy Act, 5 U.S.C. § 552a, by the American Civil Liberties Union of Southern California ("ACLU-SC") on behalf of itself and Osef Andrade Castillon (hereinafter "Requestors"). See Exhibit A (Privacy Act authorization for Mr. Andrade).

Requestors seek records related to the Immigration and Customs Enforcement's ("ICE") worksite enforcement operation at Terra Universal, Inc. ("Terra Universal") on June 29, 2010. Requestors make this request for records because of their concerns about the manner in which ICE conducted the enforcement operation, and the treatment of the persons arrested and detained as a result of the operation. Requestors seek to determine whether the enforcement action and the treatment of arrested persons complied with applicable federal, state, and local statutes and regulations, as well as with the agency's policies, procedures and internal guidelines.

FOIA Officer, January 14, 2011
Page 2

We note that in the past ICE has disclosed records related to its worksite enforcement actions. Following a worksite raid at MicroEnterprise Solutions in Van Nuys, California in February 2008, ACLU-SC - along with several other nonprofit organizations - submitted a FOIA request seeking records related to the enforcement action. After ACLU-SC filed a federal lawsuit seeking to compel ICE to disclose the requested records, ICE ultimately agreed to disclose thousands of pages of documents - many of which fall within the same categories of records sought here. *See National Immigration Law Center v. DHS*, Case No CV08-07092 (DDP) (C.D. Cal. 2008). Given that experience, we hope and expect that ICE will promptly respond to our request and disclose the requested records, so that both parties may avoid needless litigation.

REQUESTORS

ACLU/SC is a non-profit organization dedicated to defending and securing the rights granted by the U.S. Constitution and Bill of Rights. ACLU/SC's work focuses on the First Amendment, equal protection, due process, privacy, and furthering civil rights for disadvantaged groups. As part of its work, ACLU/SC disseminates information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials.

On the morning of June 29, 2010, approximately 40 ICE agents raided the manufacturing facility of Terra Universal, located at 800 South Raymond Avenue, Fullerton, CA, 92831. Upon entering the premises of the factory, ICE agents blocked all exits, stopped all production, and ordered all workers to gather in the center of the plant. ICE agents asked the workers to form three groups according to their citizenship or immigration status-citizens, lawful permanent residents ("LPR"), and undocumented immigrants. ICE agents came with a list of workers suspected of being undocumented. The Los Angeles Times reported that the search warrant specified that agents were looking for job applications, employment verification forms, Social Security Administration correspondence, and company tax records. *See Immigration Raid at Fullerton Factory Leads to 43 Arrests*, Los Angeles Times (July 1, 2010).

Workers were questioned on-site about their immigration status and those who admitted to being undocumented were handcuffed. In total, 43 workers were arrested and transported to an ICE processing center in Santa Ana for further questioning. Later that afternoon, attorneys from ACLU-SC arrived at the Santa Ana federal building but were denied access to the detained workers by DHS staff. After being questioned and issued Notices to Appear ("NTA"), the workers were released.

Terra Universal is currently under investigation by ICE and the U.S. Attorney's Office for criminal and civil immigration violations. The Department of Labor is also investigating Terra Universal for labor and employment violations. In August 2010, ACLU-SC filed a federal class-action lawsuit on behalf of current and former Terra Universal workers, alleging employment and other workplace violations at Terra Universal. *See Morales v. Terra Universal*,



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FOIA Officer, January 14, 2011
Page 3

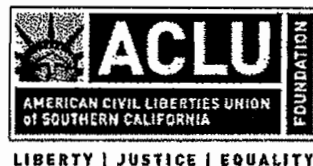
Inc., CV10-6490 (PA) (C.D. Cal 2010). The case is currently pending in the Central District of California. ACLU/SC represents Mr. Andrade, who is one of the named Plaintiffs, in that suit.

Osfel Andrade Castillon is a former Terra Universal employee and named Plaintiff in the class action lawsuit against Terra Universal. On November 10, 2010, ICE arrested Mr. Andrade at his home in Anaheim, California. Following his arrest, ICE agents questioned Mr. Andrade about a variety of matters, including whether he had attempted to aid and abet the escape of Terra Universal workers on the day of the enforcement action. ICE agents indicated that they had been informed that Mr. Andrade had sent a text message to a Terra Universal employee in which he warned the employee about the raid. Following questioning in Santa Ana, Mr. Andrade was placed in detention at Mira Loma Detention Center in Lancaster. Mr. Andrade was later released on bail and remains in active removal proceedings.

THE REQUEST FOR RECORDS

We seek disclosure of any and all records, which were prepared, received, transmitted, collected and/or maintained by the ICE or the Department of Homeland Security ("DHS"), or any sub-component of the DHS, relating to or concerning the following:

- 1) ICE policies, procedures and practices with respect to worksite immigration enforcement in effect or issued from January 2010 until the present, including but not limited to:
 - a. ICE policies, procedures and practices with respect to the arrest, questioning, detention and initiation of removal proceedings against workers arrested during worksite enforcement actions.
 - b. ICE policies, procedures and practices with respect to humanitarian guidelines for the release of workers arrested during worksite enforcement actions.
 - c. ICE priorities for worksite immigration enforcement actions.
- 2) **Terra Universal**, including but not limited to:
 - a. Records referenced in the *Worksite Enforcement Policies Memorandum, Memo*, Pearson, Exec. Assoc. Comm. (HQOPS 50/19-P) (May 22, 1998), including but not limited to the pre-operation plans, worksite enforcement operation plans, and pre-operation briefings pertaining to ICE's worksite enforcement operation at Terra Universal.
 - b. Any and all communications or records between ICE and the Department of Labor related to Terra Universal, including, but not limited to, ICE's



FOIA Officer, January 14, 2011
Page 4

investigation and worksite enforcement action.

- c. Any and all communications or records between ICE and any state or local law enforcement or other governmental agencies relating to Terra Universal.
 - d. Any and all communications or records between ICE and any Terra Universal manager, supervisor, employee and/or agent.
 - e. Copies of any and all warrants (either administrative or criminal) issued and served on an agent of Terra Universal relating to the worksite enforcement operation.
 - f. Any and all communications or records relating to informants at Terra Universal.
- 3) Any and all records relating to or concerning **Osfel Andrade Castillon** (A 095-773-244).

As should be apparent from the plain language of the second and third request, Requestors seek any and all records relating to or concerning Terra Universal, Inc. and Osfel Andrade Castillon. We seek not only the contents of any main files bearing those names, but also any records relating to or concerning Terra Universal and Osfel Andrade that may be cross-listed, cross-referenced, or contained in the main file pertaining to another individual or entity. This request seeks the entirety of any document in which appear the names, or any variations of the names, Terra Universal and Osfel Andrade.

LIMITATION OR WAIVER OF SEARCH AND REVIEW FEES

We request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by... a representative of the news media ...") and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to "representatives of the news media"). The information sought in this request is not sought for a commercial purpose. The ACLU-SC is a non-profit organization that intends to disseminate the information gathered by this request to the public at no cost.

The "term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). The statutory definition does not require that the requester is a member of the traditional media. As long as the requester meets the definition in any aspect of its work, it qualifies for limitation of fees under this section of the statute.



FOIA Officer, January 14, 2011
Page 5

For the reasons stated above with respect to expedited processing, the ACLU-SC qualifies as "representative of the news media" under the statutory definition, because it routinely gathers information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the public. See *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Accordingly, any fees charged must be limited to duplication costs.

WAIVER OR REDUCTION OF ALL COSTS

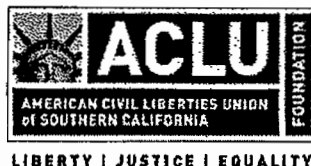
We request a waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester"); see also 6 C.F.R. § 5.11(k).

The public interest fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). The Requestors need not demonstrate that the records would contain evidence of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, good or bad. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003).

Disclosure of the information sought is in the public interest and will contribute significantly to public understanding of the federal government's policies and practices with respect to ICE's worksite enforcement. As shown by the news reporting of the Terra Universal enforcement action, these issues are of intense public concern. See, e.g., *Immigration Raid at Fullerton Factory Leads to 43 Arrests*, Los Angeles Times (July 1, 2010); *ICE Agents Raid Manufacturer in Fullerton*, Orange County Register (June 29, 2010); *ICE Arrests 43 in Fullerton's Raid*, Los Angeles Examiner (June 30, 2010); *ICE Raids OC Manufacturing Plant, 43 in Custody*, Associated Press (June 29, 2010).

The requested records relate directly to operations or activities of the government that potentially impact or infringe fundamental rights and freedoms. The records are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost, and through meetings with members and affected communities. As demonstrated above, the ACLU-SC has both the intent and ability to convey any information obtained through this request to the public.

The Requestors state "with reasonable specificity that [their] request pertains to operations of the government," and "the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having



FOIA Officer, January 14, 2011

Page 6

explained with reasonable specificity how those documents would increase public knowledge of the functions of the government." *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Health and Human Services*, 481 F. Supp. 2d 99, 107-109 (D.D.C. 2006).

In the event a waiver or reduction of costs is denied, please notify me in advance if the anticipated costs exceed \$100.

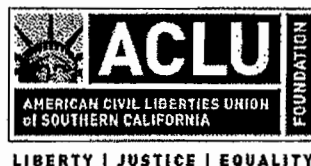
CONCLUSION

If this request is denied in whole or part, please justify all deletions by reference to specific FOIA exemptions. We expect you to release all segregable portions of otherwise exempt material. For example, we expect you to redact names of individuals for whom privacy waivers are not enclosed, if such redaction is required by the Privacy Act or other law, and release any otherwise disclosable records as redacted. We also expect that this FOIA request will be processed in accordance with the presumption of disclosure and President Obama's directive to federal agencies on January 26, 2009. Pres. Obama, Memo for the Heads of Exec. Offices and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009) ("The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.").

We reserve the right to appeal any decision relating to this FOIA request, including but not limited to the decision to withhold any information, or to deny a waiver or reduction of fees. We look forward to your reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If you have questions, please contact Jennie Pasquarella at 213-977-5236 or via e-mail at jpasquarella@aclu-sc.org. Thank you in advance for your timely consideration of this request. Please furnish records as soon as they are identified to the undersigned at:

ACLU of Southern California
1313 W. Eighth Street
Los Angeles, CA 90017

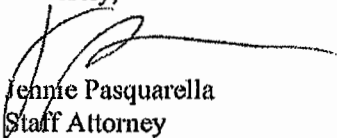


FOIA Officer, January 14, 2011

Page 7

We certify that the information provided supporting the request for expedited processing is true and correct to the best of our knowledge and belief.

Sincerely,


Jennie Pasquarella
Staff Attorney
ACLU-Southern California
1313 West Eighth Street
Los Angeles, CA 90017
(213)-977-5236
jpasquarella@aclu-sc.org



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Authorization

I, Osfel Andrade hereby authorize attorneys from the ACLU of Southern California, 1313 West 8th Street, Los Angeles, CA 90017, to submit a request under the Freedom of Information Act and the Privacy Act to the federal government and to receive responsive documents on my behalf.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 15, 2011, in Anaheim, California.

Osfel Andrade
Name (print)

2205 W. Broadway #A-116
Address

Anaheim CA 92804
City, State Zip


 Osfel Andrade
Signature

EXHIBIT B

U.S. Department of Homeland Security
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

January 31, 2011

JENNIE PASQUARELLA
ACLU
1313 WEST EIGHT STREET
LOS ANGELES, CA 90017

Re: 2011FOIA4894

Dear Ms. Pasquarella:

This acknowledges receipt of your January 19, 2011, Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), for records regarding worksite enforcement operation at Terra Universal, Inc. on June 29, 2010. Your request was received in this office on January 28, 2011.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1523 open requests ahead of yours.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number 2011FOIA4894. Please refer to this identifier in any future correspondence. You may contact this office at (202) 732-0300 or 1-866-633-1182.

Sincerely,




Catrina M. Pavlik-Keenan
FOIA Officer


EXHIBIT C

U.S. Department of Homeland Security
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

January 31, 2011

JENNIE PASOURELLA
ACLU
1313 WEST EIGHT STREET
LOS ANGELES, CA 90017

Re: 2011FOIA4894

Dear Ms. Pasquarella:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 19, 2011, and to your request for a waiver of all assessable FOIA fees. Your request was received in this office on January 28, 2011. Specifically, you requested records regarding worksite enforcement operation at Terra Universal, Inc. on June 29, 2010.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1523 open requests ahead of yours.

As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records. The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor. If any responsive records are located, we will consider

these factors in our evaluation of your request for a fee waiver.

In the event that your fee waiver is denied, we shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. As a non-commercial requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate of the searcher. You will be promptly notified once a determination is made regarding your fee waiver request.

Per section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. We will make every effort to comply with your request in a timely manner; however, there are currently 1523 open requests ahead of yours. Nevertheless, please be assured that one of the processors in our office will respond to your request as expeditiously as possible.

Your request has been assigned reference number **2011FOIA4894**. Please refer to this identifier in any future correspondence. You may contact this office at (202) 732-0300 or (866) 633-1182.

Sincerely,



Catrina M. Pavlik-Keenan

FOIA Officer



Exhibit 8

U.S. Department of Homeland Security
800 North Capitol Street NW Stop 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

February 22, 2011

Jennie Pasquarella, Esq.
ACLU of Southern California
1313 West Eighth Street
Los Angeles, CA 90017

RE: ICE FOIA Case Number 2011FOIA4894

Dear Ms. Pasquarella:

This letter provides a preliminary fee estimate applicable to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 19, 2011. You have requested copies of records related to ICE's worksite enforcement operation at Terra Universal, Inc. on June 29, 2010.

ICE evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations¹. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver: (1) whether the subject of the requested records concerns "the operations or activities of the government"; (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be "significant"; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to deny your request for a fee waiver.

The FOIA provides three levels of fees that may be assessed to process a FOIA request according to categories of FOIA requesters.² Pursuant to the DHS implementing regulations, 6 C.F.R. § 5.11, individuals or non-commercial requesters are responsible to pay 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher.

¹ 6 CFR § 5.11(k).

² See 5 U.S.C. § 552(a)(4)(A)(ii)(I),(II),(III) (2000).

A preliminary search of the ICE Office of Homeland Security Investigations (HSI) and the ICE Office of the Principal Legal Advisor (OPLA) has determined that it will require a minimum of 360 hours to complete the search for records responsive to your request. Billable search costs at \$7.00 per quarter hour would be \$10,024.00.³ Please note that this estimate does not include any applicable duplication costs. Further, please be advised that this estimate does not include search or duplication costs associated with records maintained by the ICE Office of Enforcement and Removal Operations (ERO).

Please confirm, in writing, your willingness to pay the total estimated processing fee of \$10,024.00. Please send your written confirmation directly to this office within 15 business days from the date of this letter. Also, because the fee is estimated above \$250.00, you must pay half the cost (\$5,012.00) before this office will begin searching for or processing any responsive records. You may send your agreement to pay estimated fees, including a payment of at least \$5,012.00, made payable to the Treasury of the United States, to this office via mail to:

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
800 North Capitol Street, Room 585
Washington, DC 20536-5009

Once we receive written confirmation of your willingness to pay the total estimated processing fees we will immediately begin the search for responsive records. In our final response to your FOIA request, we will adjust the processing fee as necessary to reflect the actual costs for search and duplication if those fees do not match the estimated fees provided above.

In the alternative, you may revise your request to narrow the scope of responsive records. If you would like to narrow the scope of your request, you may submit your amended request to the address above or to ICE-FOIA@dhs.gov.

If we do not receive written confirmation of your willingness to pay the total estimated processing fee amount of \$10,024.00 or an amended request within 15 business days from the date of this letter, we will consider this request withdrawn, and we will administratively close your request file. Pending your response, we will toll your request under the provisions of the FOIA.⁴

You have the right to appeal ICE's determination to deny your request for a fee waiver. Should you wish to do so, you must send your appeal and a copy of this letter, within 60 days of the date of this letter to the following address:

U.S. Immigration Customs Enforcement
Office of Principal Legal Advisor
U.S. Department of Homeland Security
800 North Capitol Street, N.W., Room 585
Washington, D.C. 20536-5009

³ 360 hours of search time minus 2 hours search free equals 358 hours. 358 hours at \$7.00 per quarter hour equals \$10,024.00.

⁴ 5 U.S.C. § 552(a)(6)(A).

Your envelope and letter should be marked "FOIA Appeal." Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.9.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email that entity at ogis@nara.gov or call 877-684-6448.

If you need to contact our office about this matter, please refer to FOIA case number **2011FOIA4894**. This office can be reached at (202) 732-0300 or (866) 633-1182.

Sincerely,



FOR

Catrina M. Pavlik-Keenan
FOIA Officer

Enclosures: February 18, 2011 ICE Second Acknowledgement Letter
January 31, 2011 ICE Acknowledgement Letter
January 19, 2011 FOIA Request

Exhibit 9



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March 14, 2011

U.S. Immigration and Customs Enforcement
800 North Capitol Street, N.W.

Chair
Stephen Rohde

5th Floor, Suite 585
Washington, D.C. 20536-5009

President
Douglas Mirell

Fax: 202-732-0310
E-mail: ice-foia@dhs.gov

Chairs Emeriti
Danny Goldberg
Allan K. Jonas
Burt Lancaster*
Irving Lichtenstein, MD*
Jarl Mohn
Laurie Ostrow*
Stanley K. Sheinbaum
*deceased

RE: FOIA Request 2011FOIA4894

Dear FOIA Officer:

This is an appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6), of your decision to deny our fee waiver request and your decision to deny our request for "representative of the news media" status.

On January 19, 2011, the ACLU of Southern California submitted a FOIA request for disclosure of all records relating to ICE's worksite enforcement operation at Terra Universal, Inc. on June 29, 2010. *See* Exhibit A (FOIA Request).

In a letter dated February 18, 2011, ICE denied our request for "representative of the news media" status. Exhibit B (ICE Letter 1) at 1. The letter stated that "[b]ased on the information contained in your letter, I am denying your request for this fee status because you have not presented a convincing argument that ACLU is an entity organized and operated to publish or broadcast news to the public." *Id.*

In a letter dated February 22, 2011, ICE denied our request for a fee waiver. Exhibit C (ICE Letter 2) at 1. The letter recited the DHS FOIA regulation's factors for a fee waiver and stated based on "a careful consideration of the factors listed above, I have determined to deny your request for a fee waiver." *Id.* The letter failed to state any reasons for the denial. The letter concluded that based on a preliminary search ICE will "require a minimum of 360 hours to complete the search for records responsive to your request" and estimated a processing fee of \$10,024, excluding duplication costs. The letter explained that our office must "pay half the cost (\$5,012.00) before this office will begin searching for or processing any responsive records." *Id.*

Executive Director
Ramona Ripston

Chief Counsel
Mark D. Rosenbaum

Deputy Executive Director
James Gilliam

Chief Financial Officer
Brenda Maull

Communications Director
Eileen White Read

Development Director
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Legal Director
Hector O. Villagra

**Managing Attorney &
Manheim Family Attorney
for First Amendment Rights**
Peter J. Eliasberg

FOIA Officer
March 14, 2011

Page 2

I. The FOIA Requires ICE To Provide The Reasons For Its Fee Waiver Denial

ICE's letter fails to provide its basis for denying the fee waiver request, contrary to its legal obligation to provide the "reasons" for its decision whether to comply with a request. *See* 5 U.S.C. § 552(a)(6)(A)(i). While the "requesters bear the initial burden of satisfying the statutory and regulatory standards for a fee waiver, the government's denial letter must be reasonably calculated to put the requester on notice as to the deficiencies in the requester's case." *Friends of the Coast Fork v. U.S. Dept. of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997). "If those reasons are inadequate, and if the requesters meet their burden, then a full fee waiver is in order." *Id.*

ICE's rote statement that its denial was based on a "careful consideration" of the DHS FOIA factors fails to meet this obligation. The denial letter does not specify which factors, if any, it determined supported its denial, the evidence it relied upon, or how it balanced the factors cited in its letter. By failing to include this information, ICE has not put us on "notice" as to the purported deficiencies in our request, *Friends of the Coast Fork*, 110 F.3d at 55, making it difficult for us to know what issues to address in this appeal. However, for the reasons explained below, it is clear that each of the DHS FOIA factors supports a grant of a fee waiver.

II. A Fee Waiver Is Strongly Warranted

The DHS FOIA regulations strongly support a fee waiver for our FOIA request. Those regulations provide that "[r]ecords responsive to a request will be furnished without charge . . . where a component determines, based on all available information, that the requester has demonstrated that: (i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and (ii) Disclosure of the information is not primarily in the commercial interest of the requester." 6 C.F.R. § 5.11(k)(1). Because our request does not involve a commercial interest, the fee waiver determination turns on whether the requested information is in the public interest.

The determination of whether the requested information is in the public interest is based on four factors:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government."
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.
- (3) Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual



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FOIA Officer
March 14, 2011

Page 3

understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(4) Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. "The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. Components shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is 'important' enough to be made public.

6 C.F.R. § 5.11(k)(2)(i-iv).

We clearly meet these standards for a public interest fee waiver. Disclosure of the information sought is in the public interest and will contribute significantly to public understanding of the ICE's policies and practices with respect to worksite enforcement. As is demonstrated by the news articles cited in our FOIA request, the Terra Universal enforcement action has been – and remains – a matter of public concern. There have been significant questions raised about whether ICE's actions were consistent with internal ICE policy and complied with applicable state and federal law. Disclosure of the requested information will aid the public in understanding whether ICE's conduct met these standards.

Further, ICE's worksite enforcement strategy has been a subject of intense public scrutiny, most recently illustrated by a hearing held by the Committee on the Judiciary of the United States House of Representatives on January 26, 2011, entitled "ICE Worksite Enforcement - Up to the Job?" See http://judiciary.house.gov/hearings/hear_01262011.html. The FOIA request seeks information about ICE's policies and practices with respect to worksite enforcement, and information specific to its worksite enforcement action at Terra Universal. Disclosure of the requested information will therefore allow the public to gain an understanding of ICE's broader policies, goals and strategies for worksite enforcement, as well as its implementation of those policies in the context of a specific enforcement action. Information regarding this sort of government operation and activity fits squarely within the fee waiver requirements. See 6 C.F.R. § 5.11(k)(1)(i).

Additionally, the ACLU/SC is uniquely well-positioned to "effectively convey information to the public" because of our expertise in the area of immigration enforcement and because we regularly disseminate information to the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. 6 C.F.R. § 5.11(k)(1)(i)(3). With respect to the Terra enforcement action, ACLU/SC has already held a press conference, distributed press releases, published a blog post and created a video. See <http://terrauniversalcase.com/> (website containing news articles, video and other information about the case). Together, these activities have generated significant press attention and raised



FOIA Officer
March 14, 2011

Page 4

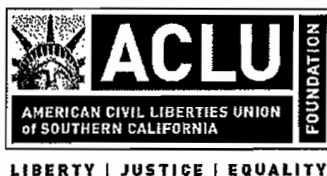
public attention about the action -- demonstrating our ability to bring the public's attention to the matters at the core of the FOIA request. "[C]ourts have found requestors' statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver." *Western Watersheds Project v. Brown*, 318 F.Supp.2d 1036, 1041 (D. Idaho 2004). See also *Friends of the Coast Fork*, 110 F.3d at 55 (holding that if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate").

Finally, we observe that it is well-established that FOIA "is to be liberally construed in favor of waivers for noncommercial requesters." *Environmental Protection Information Center v. U.S. Forest Service*, 432 F.3d 945, 947 (9th Cir. 2005) (internal citation and quotation marks omitted). In 1974, Congress added the fee waiver provision in "an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests," particularly journalists, scholars, and non-profit public interest groups. See *Ettlinger v. Fed. Bureau of Investigation*, 596 F.Supp. 867, 872 (D.Mass.1984) (citing Senate Comm. on the Judiciary, Amending the Freedom of Information Act, S.Rep. No. 93-854, at 10-19 (1974)). "The fee waiver provision was amended in 1986 in order 'to remove the roadblocks and technicalities' that continued to stand in the way of obtaining a fee waiver." *Community Legal Services, Inc. v. U.S. Dept. of Housing and Urban Development*, 405 F.Supp. 2d 553, 555 (E.D. Pa. 2005) (citing 132 Cong. Rec. S16, 489-01 (daily ed. Oct. 15, 1986) (statement of Sen. Leahy)). To the extent there is any ambiguity about our entitlement to a fee waiver, the legislative history of the FOIA fee waiver provision, as well as the well-established body of case law holding that it is to be liberally construed, counsel in favor of granting a fee waiver.

III. The ACLU/SC Is A Representative Of The Media

The DHS FOIA regulations define a "representative of the news media" to mean "any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public." 6 C.F.R. § 5.11(b)(6). News is defined as "information that is about current events or that would be of current interest to the public." *Id.*

The ACLU/SC fits within this definition. As explained above, it is a core mission of the ACLU/SC to educate the public through newsletters, news briefings, "Know Your Rights" documents, and other educational and informational materials. The ACLU/SC's prior work on the Terra Universal action – including press releases, blog posts and a video – demonstrate our ability to educate the public on current events. As such, the ACLU/SC qualifies as a "representative of the news media." See *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees).



FOIA Officer
March 14, 2011

Page 5

I look forward to a written response to this appeal by the close of the statutory time period, which is within twenty working days. *See* 5 U.S.C. § 552(a)(6)(A)(ii). Thank you for your prompt attention to this matter. If you have any questions, please contact me at (213) 977-5232.

Sincerely,



Michael Kaufman
Attorney, ACLU/SC



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Exhibit 10



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April 4, 2011

Chair

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President

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**Legal Director &
Manheim Family Attorney
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Peter J. Eliasberg

Deputy Legal Director

Ahilan T. Arulanantham

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U.S. Immigration and Customs Enforcement

800 North Capitol Street, N.W.

5th Floor, Suite 585

Washington, D.C. 20536-5009

Fax: 202-732-0310

E-mail: ice-foia@dhs.gov

RE: FOIA Request 2011FOIA4894 [*Supplement to Appeal*]

Dear FOIA Officer:

This letter supplements our previously filed appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6), of your decisions to deny our requests for a fee waiver and for “representative of the news media” status, sent on March 14, 2011. *See* Exhibit A (FOIA appeal).

We write to inform your office of a recent federal court decision in which the court determined that the ACLU of Washington is a “representative of the news media” for FOIA purposes, as well as to provide some additional information that bears on this appeal.

In an order issued March 14, 2011 in *American Civil Liberties Union of Washington v. U.S. Department of Justice*, the Western District of Washington concluded that the ACLU of Washington qualifies as a “representative of the news media” for FOIA purposes and that the Department of Justice had erred in not granting the ACLU of Washington a fee waiver on that basis. *See* Exhibit B at page 18 (order granting fee waiver) (“Plaintiff [ACLU of Washington] qualifies as a representative of the news media under [the FOIA] definition” and citing ACLU of Washington website). That conclusion is consistent with the findings of other courts that similar nonprofit news and advocacy organizations qualify as “representatives of the news media” under FOIA. *See, e.g., Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

Like its counterpart in Washington state, it is a core mission of the ACLU/SC to educate the public through newsletters, news briefings, “Know Your Rights” documents, and other educational and informational materials. Under the clear reasoning of the district court in *American Civil Liberties Union of*

Washington v. U.S. Department of Justice, the ACLU/SC's media and educational work qualifies us for "representative of the news media" status.

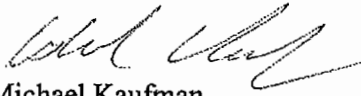
Moreover, ICE's refusal of a fee waiver is inconsistent with ICE's prior disclosure of documents – without charging fees – in response to a virtually identical FOIA request filed by the ACLU/SC. In 2008, the ACLU/SC, along with several other nonprofit organizations, filed a FOIA request seeking documents related to ICE's workplace raid at Micro Solutions Enterprise in Van Nuys, California. *See* Exhibit C (FOIA request). After ICE failed to produce any responsive records, the ACLU/SC filed suit seeking disclosure of the withheld documents in *NILC v. DHS*, Case No. 08-7092 (C.D. Cal.). *See* Exhibit D (complaint). ICE later agreed to settle the suit and disclose hundreds of pages of documents responsive to the ACLU/SC's FOIA request. As part of the settlement, ICE did not seek to assess ACLU/SC any copying or duplication fees to produce the withheld documents – demonstrating ICE's recognition of the ACLU/SC's entitlement to a fee waiver under FOIA. There is no basis for ICE to take a different position with regard to our current FOIA request, which seeks nearly identical records related to a similar workplace enforcement action at Terra Universal, Inc.

Finally, we observe that federal government agencies have granted the ACLU/SC "representative of the news media" status for FOIA requests in the past. *See, e.g.*, Exhibit E (Department of State granting "representative of the news media status" to ACLU/SC). In that case, the Department of State – which applies similar standards as ICE – found that the ACLU/SC qualifies as a "representative of the news media" for FOIA purposes. There is no principled basis for ICE to take a different position than the Department of State.

In light of the foregoing and the reasons discussed in our initial appeal letter, we sincerely hope that ICE will revisit its erroneous decisions to deny the ACLU/SC a fee waiver and "representative of the news media" status and avoid any further unnecessary and costly litigation in this matter.

If you have any questions, please contact me at (213) 977-5232.

Sincerely,


Michael Kaufman
Attorney, ACLU/SC



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Exhibit 11



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May 2, 2011

Chair

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President

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800 North Capitol Street, N.W.

5th Floor, Suite 585

Washington, D.C. 20536-5009

Fax: 202-732-0310

E-mail: ice-foia@dhs.gov

RE: FOIA Request 2011FOIA4894 [*Supplement to Appeal*]

Dear FOIA Officer:

This letter supplements our previously filed appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(6), of your decisions to deny our requests for a fee waiver and for "representative of the news media" status, sent on March 14, 2011. *See* Exhibit A (FOIA appeal). We previously sent a supplemental letter on April 4, 2011 regarding intervening federal court authority. *See* Exhibit B (supplemental letter).

We write to inform your office that the ACLU of Southern California was recently granted a fee waiver by United States Citizenship and Immigration Services ("USCIS"), a division of the Department of Homeland Security ("DHS"), for a FOIA request on a different matter. USCIS initially denied our fee waiver request, but reversed its decision on appeal. *See* Exhibit C (appeal decision).

ICE applies the same criteria as USCIS in determining whether to grant a fee waiver. *See* 6 C.F.R. § 5.11(k). Although the USCIS FOIA concerned a different subject matter, there can be no serious dispute that the subject matter of our ICE FOIA request involves matters of public concern regarding government operations (ICE's conduct and policies with respect to worksite immigration enforcement), for the reasons explained at length in our initial appeal. As such, there is no basis for ICE to take a different position than USCIS and we urge your office to reconsider its position.

Sincerely,

Michael Kaufman
Attorney, ACLU/SC

EXHIBIT C

U.S. Department of Homeland Security
Office of General Counsel
20 Massachusetts Avenue NW, Room 4210
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

April 13, 2011

APP2010001003

Jennie Pasquarella
ACLU of Southern California
1313 W. 8th Street
Los Angeles, CA 90017

Dear Jennie Pasquarella:

Re: COW2010000083

You appealed the action of the National Records Center regarding your waiver of fees request applicable to access to records pertaining to Policies and procedure on the Processing of Naturalization Applications relating to Muslims, dated December 06, 2010.

On the basis of all of the information available to us, we have determined that your request for a waiver of fees has been approved.

Sincerely,

A handwritten signature in cursive script, reading "Peter D. Gregory".

Peter D. Gregory, Chief,
Commercial & Administrative Law Division
Department of Homeland Security
Citizenship and Immigration Services

Exhibit 12

U.S. Department of Homeland Security
800 N. Capitol St., SW STOP 5009
Washington, DC 20536-5009



**U.S. Immigration
and Customs
Enforcement**

July 6, 2011

JENNIE PASQUARELLA, ESQ.
ACLU OF SOUTHERN CALIFORNIA
1313 W. EIGHTH ST.
LOS ANGELES, CA 90017

RE: OPLA11-097, 2011FOIA4894

Dear Ms. Pasquarella:

This is in response to your letter dated January 22, 2011, appealing the adverse determination in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request. The initial request asked for records related to ICE's worksite enforcement operation at Terra Universal, Inc. on June 29, 2010.

U.S. Immigration and Customs Enforcement (ICE) initially denied your request in part by denying your request for a fee waiver. You have appealed the decision to deny your request for a fee waiver. ICE has further reviewed your request in question that gave rise to this partial denial of your request. Our analysis follows.

Fee waivers are properly granted "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."¹ More specifically, the Department of Justice issued revised fee waiver policy guidance on April 2, 1987.² These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. Those six factors are as follows: (1) whether the subject of the requested records concerns "the operations or activities of the government"; (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be "significant"; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

You have appealed, specifically indicating that the requested information would significantly contribute to the public's understanding of Government actions.

¹ See, *Piper v. U.S. Dep't of Justice*, 294 F. Supp. 2d 16, 24 (D.D.C. 2003).

² See, 5 U.S.C. § 552(e); see also *FOIA Update*, Vol. XIX, No. 3, at 6; *FOIA Update*, Vol. XIV, No. 3, at 8.

As to the first of the five factors, there is no question that the requested information concerns the operations or activities of the government. The requested items are specifically regarding an enforcement operation carried out by the government.

The second factor requires that the disclosure "likely contribute" to the understanding of the public at large regarding specific government operations or activities. Many of the records, including news reports regarding the enforcement operation, possible Office of Public Affairs releases regarding the enforcement operation, general agency statistics, and other items are publicly available.³ However, this is not determinative as to the fee waiver request as there could be additional records that would be responsive to the request which are not readily available to the public.

The third factor necessitates that disclosure contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.⁴ More specifically, agencies must evaluate the ability of the requester to disseminate the information.⁵ Furthermore, the intended method of that dissemination⁶ must be included in the request for a fee waiver.

In the case at hand, the original request submitted asserted that the ACLU-SC is a non-profit organization that intends to disseminate the information gathered by this request to the public at no cost. Your appeal letter, dated February 22, 2011, reiterated the request for a waiver of fees based upon an assertion that the disclosure of the information is in the public interest and that the requester is well-positioned to "effectively convey information to the public." As an aside, "non-profit" status is not determinative of the commercial nature of information for the purposes of the fifth factor in assessing the propriety of a fee waiver.⁷ Legal representation, advocacy, or counsel by the requester, regardless of whether or not such is provided to a client pro bono, is certainly a trade or profession that would be advanced by the records sought.⁸ The request fails to specify the non-commercial intent to disseminate the information to significantly contribute to the public's understanding.⁹ The requester has argued that they are a representative of the news media, and are thus entitled to a fee waiver. The requester, however, is not "an entity that is organized and operated to publish or broadcast news."¹⁰ The website of the requester describes in detail the legislative, judicial, and community advocacy of the requester. However, nowhere in the website is there mention of a single role in news media, publication, or broadcasting. The request also only vaguely references "print and other media" that would be used to publish the requested records. The commercial interest of the requester can be gleaned from their website¹¹, and is directly advanced by the requested information in this instance.

As such, the publication of the information regarding an enforcement operation must be compared to the commercial interest of the requester in having "meetings with members and affected

³ See, <http://www.ice.gov/foia/readingroom.htm>.

⁴ See, *Forest Guardian v. U.S. Dept. of Interior*, 416 F.3d at 1179 (10th Cir. 2005).

⁵ *Orloff*, No. 98-2819, slip op. at 21 (D.D.C. Mar. 22, 2002).

⁶ *Hall v. CIA*, No. 04-0814, 2005 WL 850379, at 7 (D.D.C. Apr. 13, 2005).

⁷ *Critical Mass Energy Project v. NRC*, 830 F.2d 278, 281 (D.C. Cir. 1987).

⁸ See, e.g., *VoteHemp Inc. v. DEA*, 237 F. Supp. 2d at 65 (D.D.C. 2002).

⁹ See, *Citizens Progressive Alliance v. United States Bureau of Indian Affairs*, 241 F. Supp. 2d 1342, 1366 (D.N.M. 2002).

¹⁰ 28 C.F.R. § 16.11(b)(6).

¹¹ See, e.g., *VoteHemp Inc.*, *supra*. (indicating that the commercial interest of a requester can be obtained from the requester's website).

communities". Any public interest in the records would be restricted to the limited segment of the population of the "affected communities" discussed in the request.

As such, the determination regarding the denial of a fee waiver request was proper in all respects under the applicable provisions of 5 U.S.C. § 552 cited above.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

This decision is the final action of the Department of Homeland Security concerning your FOIA/PA request for expedited processing and a waiver of fees. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or in which the agency records are situated, or in the District of Columbia.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is OPLA11-097 and the FOIA case number, which is 2011FOIA4894.

Sincerely,



Susan Mathias
Chief

Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security

Exhibit 13



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August 30, 2011

Chair

Stephen Rohde

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800 North Capitol Street, N.W.

5th Floor, Suite 585

Washington D.C. 20536-5009

Fax: 202-732-0310

Email: ice-foia@dhs.gov

RE: Appeal OPLA11-097; FOIA Request 2011FOIA4894

Dear FOIA Officer:

We write to respond to Immigration and Customs Enforcement's ("ICE") letter dated July 6, 2011, denying on appeal our fee waiver request that we filed pursuant to Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(6). The denial was based in part on ICE's conclusion that the requested documents would further the ACLU of Southern California's ("ACLU/SC") advocacy, litigation and public education efforts, which ICE deemed "commercial interests." Because this is the first time that ICE has raised this argument, and because it presents an unprecedented interpretation of FOIA that would dramatically undermine the ability of the ACLU/SC and other nonprofit organizations' ability to utilize FOIA, we strongly urge you to reconsider your decision.

Background

On January 19, 2011, the ACLU/SC submitted a FOIA request seeking disclosure of government records related to an ICE worksite enforcement operation at Terra Universal, Inc. on June 29, 2010. *See* Exhibit A. The ACLU also sought fee waivers, both as a "representative of the news media" and in the public interest.¹ In a letter dated February 18, 2011, ICE denied our request for "representative of the news media" status. Exhibit B at 1. On February 22, 2011, ICE denied our request for a public interest fee waiver. Exhibit C at 1. The ACLU appealed both fee waiver denials on March 14, 2011, following up with two supplemental letters. *See* Exhibits D, E, F.

On July 6, 2011, ICE denied the ACLU's appeal on both grounds, deciding that the ACLU/SC was not eligible for a public interest fee waiver or "representative of the news media" status. *See* Exhibit G ("July 6 Letter"). ICE's

¹ *See* 5 U.S.C. §§ 552(a)(4)(A)(ii)(II), 552(a)(4)(A)(iii).

U.S. Immigration and Customs Enforcement
August 31, 2011
Page 2

July 6 Letter bases its denial of our request for media representative status on the fact that "nowhere in the website is there mention of a single role in news media, publication, or broadcasting." Exhibit G at 2.

The basis of ICE's denial of our request for a fee waiver is unclear. In the July 6 Letter, ICE cited Department of Justice FOIA regulations, which lay out six factors to determine whether a requester is eligible for this type of waiver. *See* 6 C.F.R. § 5.11(k)(2). ICE found that our request would "likely" contribute to an understanding of the government operations or activities at issue, satisfying the first two factors. The Letter then cited to the third factor, which concerns whether disclosure will contribute to the public's understanding. Although ICE did not make a finding as to this factor, the Letter questioned the ACLU/SC's ability to disseminate information to the public.

Finally, ICE found that the "commercial interest" of the ACLU/SC would be "directly advanced by the requested information in this instance," a consideration relevant to the final two factors. The Letter explained that "[l]egal representation, advocacy, or counsel by the requester, regardless of whether or not such is provided to a client pro bono, is certainly a trade or profession that would be advanced by the records sought."

The Letter then opaquely concluded "the publication of the information regarding an enforcement operation must be compared to the commercial interest of the requestor in having 'meetings with members and affected communities.' Any public interest in the records would be restricted to the limited segment of the population of the 'affected communities' discussed in the request." The Letter did not, however, explain how these interests "compared" or otherwise make a finding on the fifth and sixth factors.

ICE's Unprecedented Denial is Deeply Misguided

ICE's denial is based on a misunderstanding of the ACLU/SC's mission and work, and a gross misreading of FOIA. ICE's conclusion that the ACLU/SC's advocacy, litigation and public education efforts constitute "commercial interests" within the meaning of FOIA has no basis in the statute, regulations or governing case law.

In order to be eligible for a public interest fee waiver, a FOIA requestor must show that "disclosure . . . is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). With respect to this requirement, the regulations provide that agencies should determine the "existence and magnitude of a commercial interest," and compare the requester's commercial interest to the public interest in disclosure in deciding whether to grant a fee waiver. 6 C.F.R. § 5.11(k)(3). The determination of the requestor's "commercial interest" should be made by reference the definition of "commercial use" as provided in 6 C.F.R. § 5.11(b)(1): "Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can



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U.S. Immigration and Customs Enforcement
 August 31, 2011
 Page 3

include furthering those interests through litigation.” 6 C.F.R. § 5.11(k)(3).

Thus the regulations make clear, and common sense confirms, that a requestor has “commercial interests” in documents that further the requestor’s business or finances. The ACLU-SC plainly has no business or financial interests in the requested records. The ACLU/SC, a non-profit organization with extensive experience in the area of immigration enforcement, seeks the requested records to educate the public about ICE’s “broader policies, goals and strategies for worksite enforcement, as well as its implementation of those policies in the context of the specific enforcement action.” Exhibit D; *see also* Exhibit A. The ACLU/SC has a demonstrated track record of public education and advocacy related to the federal government’s immigration enforcement activities, and has already brought significant media, public and Congressional attention to ICE’s conduct during the Terra workplace enforcement action. *See* Exhibit A; D; E; F.

Contrary to ICE’s suggestion, the ACLU/SC stands to gain nothing financially or commercially from the requested records. While the ACLU/SC previously represented Terra employees in a federal court action to recover back wages for overtime violations, the records sought – which concern the federal government’s immigration enforcement raid at Terra, not Terra’s wage and hour practices – have absolutely no bearing on that lawsuit. There is no conceivable way the ACLU/SC’s public education and advocacy efforts related to the enforcement action could be construed as “commercial” in nature, given that the ACLU/SC does not charge for its advocacy or otherwise seek to generate money from its work (aside from our ordinary fundraising efforts that may highlight our efforts).

The sole authority that ICE cited in support of its conclusion is *VoteHemp, Inc. v. DEA*, 237 F.Supp.2d 55 (2002). The case is clearly inapposite. There, the requestor’s stated mission was to “promote the ‘acceptance of and free market for Industrial Hemp,’” and its website “contain[ed] direct links to the websites of companies that sell hemp products.” *Id.* at 64-65. The court concluded that “plaintiff’s advocacy for a free market in hemp, its association with businesses with a commercial interest in hemp products, coupled with the potential benefit that businesses would acquire from disclosure support the DEA’s finding that plaintiff has a commercial interest in the disclosure sought.” *Id.* The ACLU/SC has no similar ties to business, and the requested records plainly would not serve to benefit the business or commercial interests of the ACLU/SC or any other entity.

ICE’s decision ignores the numerous cases in which courts found nonprofits engaged in public interest advocacy, litigation, and public education, like the ACLU/SC, do not have “commercial interests” implicated by their FOIA requests and were granted fee waivers.¹ Indeed,

¹ *See FedCURE v. Lappin*, 602 F. Supp. 2d 197, 201 (D.D.C. 2009) (public interest
 (continued...))



U.S. Immigration and Customs Enforcement
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 Page 4

as we previously observed, the ACLU/SC and other ACLU affiliates are routinely granted fee waivers by federal agencies, including DHS components. *See* Exhibit D; E; F. These decisions reflect the common sense notion that the ACLU/SC, and other organizations like it, does not utilize FOIA for financial gain.

Perhaps most troubling, ICE's unprecedented rationale would prohibit any legal services or advocacy nonprofit organizations from obtaining a FOIA fee waiver, leaving them unable submit FOIA requests because of the significant fees involved. Congress specifically adopted the fee waiver provision to assist non-profit public interest organizations in their efforts to obtain documents from the government, and made clear that it does not want large fees to impede such organizations from promoting government transparency through FOIA requests.² ICE's decision here is directly contrary to Congress' purpose in adopting the fee waiver provision and threatens to undermine FOIA's promise of transparency and openness in government.

Conclusion

We urge ICE to reconsider its denial of our appeal based on its entirely new and deeply misguided conclusion that the ACLU/SC's advocacy, litigation and public education efforts constitute "commercial interests" within the FOIA. The ACLU/SC has amply met its obligation to state with "reasonable specificity" that it satisfies the requirements for a public interest fee

(...continued)

waiver ordered for FedCURE, a non-profit organization which advocates for the federal inmate population and their families) ("As a § 501(c)(3) non-profit organization [], the Court agrees that FedCURE's requests are not rooted in a 'purpose that furthers [its] commercial, trade, or profit interests'"); *Ctr. for Medicare Advocacy, Inc. v. HHS*, 577 F. Supp. 2d 221 (D.D.C. 2008) (public interest waiver ordered for the Center for Medicare Advocacy, a non-profit corporation that educates and advocates for Medicare beneficiaries across the nation) ("The [Center for Medicare Advocacy] has established that it does not have a commercial interest in the disclosure of the disclosed information. The plaintiff noted in its fee waiver request that it is a well known not-for-profit organization that educates and advocates on behalf of Medicare beneficiaries nationwide.").

² *See* S. Rep. No. 93-854, at 19 (1974) (Senate Committee on the Judiciary, "Amending the Freedom of Information Act"), *reprinted in Source Book: Legislative History, Texts, and Other Documents* 225, at 171 (Joint Comm. Print 1975) (referencing "public interest group[s] seeking information to further a project benefitting the general public," "nonprofit public interest group[s]," and those seeking "information [which is] public interest oriented" as types of requestors that Congress intended to assist with FOIA fee waivers).

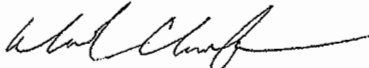



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U.S. Immigration and Customs Enforcement
August 31, 2011
Page 5

waiver and “representative of the news media” status.³ See Exhibits A, D, E, F.⁴ ICE should immediately grant the ACLU/SC a public interest fee waiver, and avoid unnecessarily prolonging this dispute through litigation that will unquestionably be resolved in the ACLU/SC’s favor.

Sincerely,


Michael Kaufman, Staff Attorney
ACLU of Southern California


Jennie Pasquarella, Staff Attorney
ACLU of Southern California

³ See *Citizens for Responsibility & Ethics in Washington v. HHS*, 481 F. Supp. 2d 99, 121 (D.D.C. 2009).

⁴ ICE’s suggestion that the ACLU/SC has not demonstrated an ability to disseminate information to the public is without merit. As explained in our initial FOIA request and subsequent letters, the ACLU/SC has a well known and demonstrated ability to communicate with the public through its newsletters, website, media outreach, and public education efforts. See Exhibit A, D. The ACLU/SC has nearly 50,000 members and supporters; a direct email list of over 37,000 people; regularly conducts “know your rights trainings” in the Southern California area, including on immigrants’ rights issues; and has been featured in the LA Times roughly 30 times in 2011 thus far, as well as countless other news media outlets. In fact, the ACLU/SC has successfully demonstrated its ability to disseminate information to the public about the very subject matter of our FOIA request, having held press conferences, issued press releases, written blog posts and created a video that have garnered the attention of both print and television media. See Exhibit A, D.



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Exhibit 14

U.S. Department of Homeland Security
500 12th St. SW: STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

September 29, 2011

JENNIE PASQUARELLA, ESQ.
ACLU OF SOUTHERN CALIFORNIA
1313 W. EIGHTH ST.
LOS ANGELES, CA 90017

RE: OPLA11-278; 2011FOIA4894

Dear Ms. Pasquarella:

This is in response to your letter dated August 30, 2011, appealing the constructive denial of your Freedom of Information Act (FOIA) request by U.S. Immigration & Customs Enforcement (ICE). Your initial request asked for all records related to ICE's worksite enforcement operation at Terra Universal Inc. on June 29, 2010. You have appealed ICE's denial of your request for a fee waiver.

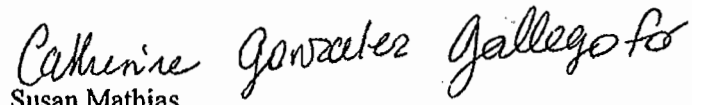
You initially appealed ICE's decision to deny the request for a fee waiver in a letter dated January 22, 2011. ICE FOIA subsequently responded to your initial appeal, and affirmed the initial determination denying the request for a fee waiver, on July 6, 2011. Your present appeal is substantively identical to your January 22, 2011 appeal. Accordingly, we are administratively closing your appeal as a duplicate.

This decision is the final action of the Department of Homeland Security concerning your FOIA/PA request. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside, or in which the agency records are situated, or in the District of Columbia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal", your appeal number, which is **OPLA11-278**, and the FOIA case number, which is **2011FOIA4894**.

Sincerely,

A handwritten signature in cursive script, reading "Catherine Gonzalez Gallego".

Susan Mathias

Chief

Government Information Law Division
ICE Office of the Principal Legal Advisor
Department of Homeland Security

Exhibit 15

Press Office
U.S. Department of
Homeland Security



**Homeland
Security**

Fact Sheet

April 30, 2009

Contact: DHS Press Office, 202-282-8010

Worksite Enforcement Strategy

- The Department of Homeland Security (DHS) has a vital responsibility to enforce the law and engage in effective worksite enforcement to reduce the demand for illegal employment and protect employment opportunities for the nation's lawful workforce.
- An effective, comprehensive worksite enforcement strategy must address both employers who knowingly hire illegal workers as well as the workers themselves. Of the more than 6,000 arrests related to worksite enforcement in 2008, only 135 were employers.
- This week, updated worksite enforcement guidance was distributed to Immigration and Customs Enforcement (ICE), which reflects a renewed Department-wide focus targeting criminal aliens and employers who cultivate illegal workplaces by breaking the country's laws and knowingly hiring illegal workers.
- Effective immediately, ICE will focus its resources in the worksite enforcement program on the criminal prosecution of employers who knowingly hire illegal workers in order to target the root cause of illegal immigration.
- ICE will continue to arrest and process for removal any illegal workers who are found in the course of these worksite enforcement actions in a manner consistent with immigration law and DHS priorities. Furthermore, ICE will use all available civil and administrative tools, including civil fines and debarment, to penalize and deter illegal employment.
- ICE officers will be held to high investigative standards including:
 - ICE will look for evidence of the mistreatment of workers, along with evidence of trafficking, smuggling, harboring, visa fraud, identification document fraud, money laundering, and other such criminal conduct.
 - ICE offices will obtain indictments, criminal arrest or search warrants, or a commitment from a U.S. Attorney's Office (USAO) to prosecute the

targeted employer before arresting employees for civil immigration violations at a worksite.

- Existing humanitarian guidelines will remain in effect, impacting worksite enforcements involving 25 or more illegal workers. This reflects a change from the previous threshold of 150.
- DHS is committed to providing employers with the most up-to-date and effective resources to comply with our nation's laws.
- DHS will continue to work with partners in the public and private sectors to maintain a legal workforce through training and employee verification tools like E-verify, which improve the accuracy of determinations of employment eligibility and combat illegal employment
- As a former border state Governor, Napolitano signed into law one of the toughest employer sanctions laws in the country in 2007 to target employers who knowingly hired illegal workers.

###

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Otis D. Wright II and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

CV11-10148 ODW (JCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Stacy R. Horth-Neubert (CA SBN 214565)
300 South Grand Avenue, Suite 3400
Los Angeles, CA 90071-3144
213-687-5000

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ACLU OF SOUTHERN CALIFORNIA,

CASE NUMBER

PLAINTIFF(S)

v.

CV11 10148-ODW(JC)

UNITED STATES IMMIGRATION AND CUSTOMS
ENFORCEMENT, a component of the Department of
Homeland Security,

SUMMONS

DEFENDANT(S).

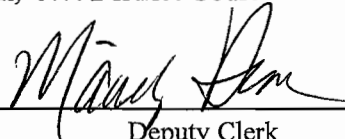
TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Stacy R. Horth-Neubert, whose address is 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071-3144. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: DEC - 7 2011

By: 
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

ORIGINAL

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input checked="" type="checkbox"/>) ACLU OF SOUTHERN CALIFORNIA Michael Kaufman (CA SBN 254575) 1313 West 8th Street, Los Angeles, CA 90017 (213) 977-5232	DEFENDANTS UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, a component of the Department of Homeland Security
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Stacy R. Horth-Neubert (CA SBN 214565) 300 South Grand Ave., Suite 3400, Los Angeles, CA 90071-3144 (213) 687-5000	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ costs, reasonable attorney fees

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

5 U.S.C. § 552. Enforce ACLU's right to a waiver of fees for production of public records sought in the public interest.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV11 10148

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☒ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Stacy H. Hensley Date December 7, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))